IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002386
First-tier Tribunal No: PA/00819/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23rd September 2024

Before

UPPER TRIBUNAL JUDGE BULPITT

Between

VA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Shaw – Counsel instructed by North Kensington Law Centre
For the Respondent: Ms Nwackuku – Senior Home Office Presenting Officer

Heard at Field House on 9 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant, her husband and her children are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or her husband or children. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Shiner (the Judge) promulgated on 7 December 2023. In that decision the Judge dismissed the appellant's appeal against the respondent's refusal of her protection claim. The claim was made on the basis that the appellant has a well founded fear of persecution in her home country of Egypt for reason of her

religion. The appellant's husband and two children, who are residing with her in Derby, were dependants on her protection claim under the Family Claims Process.

The Judge's Decision

2. The Judge made his decision following a hearing that took place in person at Taylor House on 22 November 2023, at which the parties adduced documentary evidence, and the appellant and her husband gave oral evidence. At that hearing it was accepted that the appellant is a Coptic Christian from Egypt but there was a dispute about whether the appellant was at risk of persecution for reason of her religion if she were to return to Egypt.

3. The appellant's case was that she had a well-founded fear of persecution because she was suspected of being responsible for a friend from university converting to Christianity. The appellant's case involved an assertion that the father of this friend was an influential man who arranged for a police investigation into the appellant, culminating in a summons being issued against her in August 2019. The Egyptian Union of Human Rights Organisation (EUHRO) investigated that summons and the appellant's account and concluded that the appellant would be in danger if she returned to Egypt. The appellant's case was that at the time the summons was issued she was living in Kuwait with her husband and children. She says that having been informed of the existence of the summons and that she was also wanted by the family of her university friend, she and her husband determined they could not safely return to Egypt. The evidence of the appellant and her husband was that they consequently made applications for visit visas to travel to the United Kingdom so they could claim asylum once they arrived. Having arrived in the United Kingdom on 17 October 2019 in accordance with the visit visa they were granted, the appellant's case was that she has established a private and family life which engaged article 8 of the Convention which includes her autistic child who is the subject of an Education Health and Care Plan (EHCP). The appellant argued that interference with the private and family life she has established in the United Kingdom would be disproportionate.

4. The Judge found that the appellant had not established the core factual basis of her claim for asylum. The Judge did not accept that that the appellant had a friend who had converted to Christianity, or that she was subject to a summons or any adverse attention arising from her religion whilst in Egypt. He concluded that the appellant had "failed to prove such matters to the lower standard". The Judge also found that the public interest in maintaining effective immigration control outweighed the appellant's private and family life rights and therefore that the decision to interfere with those rights by refusing the appellants claim was proportionate.

The appellant's appeal

5. Although he granted the appellant permission to appeal against the Judge's decision on five grounds, Upper Tribunal Judge Macleman made clear that the grant was primary on the basis of the first ground which asserted that the Judge made a material mistake of fact when considering the appellant case. Judge Macleman stated that the other grounds might not have attracted permission without ground one but that all grounds could be argued.

6. The respondent filed a written response to the appellant's grounds of appeal in accordance with Rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 in which she contested all five grounds of appeal.

The Hearing at the Upper Tribunal

7. The hearing before me was conducted remotely. I was present at Field House while the parties appeared via the Cloud Video Platform (CVP). Ms Shaw relied on the written grounds of appeal but, consistent with the indication given by Upper Tribunal Macleman, focused her submissions on the first ground of appeal. Ms Nwackuku similarly relied on the respondent's r24 response, concentrating on the first ground of appeal. I record my thanks to both advocates for their helpful submissions and especially my thanks to Ms Nwackuku for her diligence in obtaining the additional information which for the reasons I explain below was essential for resolving this appeal.

8. At the conclusion of the hearing I reserved my decision which I provide below together with my reasons.

Ground 1 – Material mistake of fact

The Law

9. Section 12(1) and (2) of the Tribunal Courts and Enforcement Act 2007 provide that a decision by the First-tier Tribunal can be set aside only if it is found to have involved the making of an error on a point of law.

10. An error of law can involve a material mistake of fact, even though that mistake may not be due to any judicial fault – see [39] of Akter (appellate jurisdiction; E and R challenges) [2021] UKUT 272 in which the following paragraph from the decision of Carnwath LJ in E and R v Secretary of State for the Home Department [2004] EWCA Civ 49 is quoted:

> "66. In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of CICB. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

Analysis

11. The evidence of the appellant and her husband was that they made their applications for visas to visit the United Kingdom from Kuwait which is where they were living prior to coming to the United Kingdom. Their evidence was that they

left Egypt for the last time no later than June 2019 and had not returned since. They stated that their fingerprints were taken in connection with that application while they were in Kuwait, and that once the application was granted, they travelled from Kuwait directly to the United Kingdom where they sought asylum. The evidence of the appellant and her husband therefore was that the family left Egypt for Kuwait before the summons was issued and did not return to Egypt after it was issued but instead travelled from Kuwait to the United Kingdom.

12. The appellant and her husband were cross examined. It was put to them that they had been inconsistent about where they were when they applied for a visit visa and where they provided their fingerprints for the purpose of that application. In particular it was put to them that in their screening interviews they had said they provided their fingerprints in Egypt. In response the appellant and her husband insisted that they had provided their fingerprints in Kuwait and maintained that they did not return to Egypt after June 2019. In submissions on the appellant's behalf it was said that stamps in the appellant's passport indicated that she was correct when she said she had not returned to Egypt after June 2019.

13. At [53] and [55] the Judge analysed the evidence about whether the appellant and her husband provided their fingerprints in Egypt or Kuwait, an issue which the Judge made clear at [55] he considered to be significant because "her claim is undermined" if the fingerprints were taken in Egypt (explaining that this would be the case regardless of whether the fingerprints were taken before or after the summons was issued). Although it is not very clearly expressed, in my judgment it is apparent reading [55] in full and in particular the sentence *"I find it remarkable that both the Appellant and [her husband] are recorded as saying in the [screening interview], that they were fingerprinted in Egypt for the UK visa, if it were not true"* that the Judge concluded that the fingerprints had in fact been taken in Egypt and not Kuwait and that this fact undermined the credibility of the appellant and her husband. In reaching this conclusion, the Judge commented at the end of [55], that the stamps in the appellant's passport which her representative submitted show the appellant had not returned to Egypt after June 2019, could not establish this fact because they are not dated.

14. Ms Nwackuku very fairly and properly disclosed at the outset of the hearing that, having interrogated the respondent's records it was apparent that the fingerprints of the appellant and her husband were in fact taken in Kuwait as part of their application for a visit visa and not in Egypt. No explanation was provided for why this information was not before the Judge but it is clear that as the information was held by the respondent, the failure to provide the information to the Judge was not the fault of the appellant. In these circumstances there was no suggestion that I should not take this new information into account even though it was not before the Judge, and it was clearly consistent with the tribunal's overriding objective of dealing with cases fairly and justly that I did so.

15. Ms Nwackuku properly conceded that this further information established that the Judge's finding that the fingerprints were provided in Egypt and not in Kuwait as claimed by the appellant and her husband was a mistake of fact. Although it was the basis on which permission to appeal was granted, in the light of this concession the question of whether the Judge' subsidiary finding that the passport stamps were not dated involved a mistake of fact is no longer relevant. Any mistake about whether the stamps were dated or not was only relevant to the primary consideration of whether the fingerprints were taken in Egypt or

Kuwait. Since it is now acknowledged that the Judge was mistaken in his conclusion that they were taken in Egypt, the fact that he got to that mistaken conclusion, in part, because he considered the stamps not to be dated, is immaterial.

16. The question for me to determine and the matter to which the oral submission were directed, was whether the Judge's mistake of fact about where the fingerprints were provided played a material (not necessarily decisive) part in the Judges reasoning. Ms Nwackuku argued that the mistake was not material to the Judge's decision because the Judge made a number of other findings adverse to the appellant and her husband which justified his conclusion that the facts of the claim had not been established to the lower standard and that they are not at risk in Egypt. Ms Shaw by contrast argued that as the Judge made clear at [46] the assessment of risk on return to Egypt depended on a holistic assessment of the appellant's evidence and in particular her credibility and that of her husband. Ms Shaw submitted that a mistake of fact which led to the appellant and her husband being disbelieved must be material to the Judge's overall conclusion that the appellant had not proved he case and is not at risk as she claims.

17. Notwithstanding Ms Nwackuku's careful submissions and the other adverse findings made by the Judge, I am satisfied that the Judge's mistaken conclusion that the appellant and her husband were not telling him the truth when they said they provided their fingerprints in Kuwait and not Egypt, was material to his subsequent conclusion that the appellant had not proved the factual basis of her claim and that she would not be at risk in Egypt. As the Judge explicitly stated at [55] the credibility of the appellant's protection claim was necessarily undermined by the finding that the appellant and her husband provided their fingerprints in Egypt. In fact the Judge made clear in that paragraph that the finding that the fingerprints were provided in Egypt damaged the appellant's claim in two ways. First, it undermined her suggestion that she would be in danger in Egypt, since it would mean that she had been able to provide her fingerprints there without encountering problems. Second, it undermined her credibility as a witness (and that of her husband) because a finding that the fingerprints were provided in Egypt necessarily involved a finding that the appellant and her husband had been untruthful in their evidence.

18. In the light of this it is not possible to conclude that the Judge's decision would have been the same if he had not made the mistake of fact about the fingerprints. I reach this conclusion notwithstanding the fact it is clear that the Judge did make a number of other adverse findings concerning the evidence adduced by the appellant. These included the "significant doubts" the Judge had about the EUHRO report and the summons, inconsistencies in the evidence about the appellant's brother in law in the United Kingdom and the appellant's failure to mention the summons in her screening interview. The reality however is that it is not possible discount the possibility that the Judge's erroneous finding that the appellant and her husband were not telling the truth about where they gave their fingerprints, played some part in the him reaching the conclusion that the appellant had "failed to establish the core factual assertions".

19. The other side of the same coin is that it is not possible to discount the possibility that the Judge would have been more confident in the veracity of the rest of the witnesses' evidence if he had known that their disputed account of giving their fingerprints in Kuwait was in fact objectively established by documents that were in the respondent's possession.

20. It is pertinent to point out that this was a mistake made unwittingly by the Judge who was not provided with the information that Ms Nwackuku obtained for this hearing. The fact that there was documentary records confirming that the appellants had given their fingerprints in Kuwait should have been disclosed by the respondent. As Aktar established however an error of law can involve a material mistake of fact, even though that mistake may not be due to any judicial fault.

21. Accordingly I find that the mistake of fact that was made was material to the Judge's decision even if it was not necessarily decisive, and therefore that it amounts to a material error of law. I am further satisfied that the consequence of that material error of law is that the decision of the Judge must be set-aside. Ms Shaw argued that in these circumstances the appeal should be remitted to the First-tier Tribunal for a fresh hearing. Ms Nwackuku did not argue against this, and I agree that it would be appropriate to remit the matter for a complete re-hearing since I have found that the findings of the original Judge have been infected by an error of law.

Grounds 2 - 5

22. Having reached this decision in respect of the first ground of appeal it is not necessary to consider the other four grounds of appeal which Judge Macleman noted might not have attracted permission had it not been for ground one, an assessment with which I agree. The error of law identified means that the matter must be remitted for a fresh hearing before a Judge other than Judge Shiner at the First-tier Tribunal

Notice of Decision

The decision of the First-tier Judge involved the making of an error on a point of law and it set aside.

The appeal is remitted to be reheard at Taylor House by a Judge of the First-tier Tribunal other than Judge Shiner.

Luke Bulpitt

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 September 2024