



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002577
First-tier Tribunal No:
PA/01061/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 October 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

MA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes, of Counsel, instructed by AB Legal Solicitors

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Field House on 8 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Egypt born in 1985. He left Egypt in December 2016 and spent time in Hungary, Italy and France. He came to the UK on 10th October 2021 and claimed asylum on 12th October 2021. The appellant's appeal against the decision of 17th August 2023 refusing his protection claim was dismissed by First-tier Tribunal Judge Thapar in a decision promulgated on 18th March 2024.
2. Permission to appeal was granted by Deputy Upper Tribunal Judge Wilding on 9th July 2024 on the basis that it was arguable that the First-tier judge had erred in law by failure to take into account the medical evidence regarding the appellant's PTSD when assessing the credibility of his claim to have been tortured in Egypt in an arguably classic Mibanga v SSHD [2005] EWCA Civ 367 style error. Permission is granted on all grounds.
3. The matter now comes before me to determine whether the First-tier Tribunal had erred in law, and is so whether any such error was material and whether the decision of the First-tier Tribunal should be set aside. It was agreed by the parties that if the first ground was made out then the decision would have to be set aside as this ground goes to the assessment of the credibility of the appellant's account, and if this was not lawfully done then the decision would have to be remade. The focus of the hearing was therefore on the first ground.

Submissions - Error of Law

4. In the grounds of appeal and in oral submissions from Mr Vokes it is argued, in short summary, that the First-tier Tribunal erred in law as follows.
5. Firstly, it is argued, that the First-tier Tribunal erred by failing to consider the medical report of Dr Galappathie when considering whether the appellant's claim to have been tortured in detention in Egypt was credible. The report diagnoses the appellant with severe depression, generalised anxiety disorder and PTSD. Dr Galappathie's opinion is that the appellant's mental health problems are clinically plausible and his PTSD is consistent with his account of trauma in Egypt and this was therefore a positive factor which needed to be weighed when considering the credibility of the appellant and was not done by the First-tier Tribunal. This was a Mibanga error of law as identified in the grant of permission.
6. Secondly, it is argued that there is an error of law by the First-tier Tribunal to have failed to give reasons for the finding that the appellant's account of involvement with the Muslim Brotherhood is vague and lacking in detail. It is also wrongly recorded that the appellant said he was expelled from university for supporting the Muslim Brotherhood when in fact he said he was expelled for being

vocal about his political opinions, and prior to the coup involvement would not have been a reason for arrest.

- 7.** The third ground asserts that the First-tier Tribunal gave weight to immaterial matters when it was found that the public prosecution document does not make any mention of the appellant being charged with affiliation to the Muslim Brotherhood. However the document refers to the appellant demonstrating against the transfer of power from President Al Ayyats, who was the leader of the Muslim Brotherhood. No other reasons are given as to why the document is unreliable so this finding is insufficiently reasoned.
- 8.** Fourthly, it is argued, that the First-tier Tribunal has misrepresented the evidence in the appellant's Egyptian lawyer's letter by stating that it says that he attended a demonstration on 3rd July when the letter says that sit-ins began following the military coup on 3rd July, and does not refer to the attendance of the appellant at a demonstration on 14th August 2013; contrary to the findings of the First-tier Tribunal it is consistent with the appellant's history stating he had to report to the police station, and it is not a reason to find that the letter is unreliable simply because no 6 month period is given in the letter. The letter has also been misunderstood in the sense that reference to facilitating release refers to the appellant leaving Egypt not prison.
- 9.** The fifth ground argues that the First-tier Tribunal misunderstood the appellant's evidence with respect to the sit-in: he initially did not run away whilst the square was surrounded by police but did do this when the demonstration was forcibly broken up by the authorities.
- 10.** The sixth ground argues that the judge commented that the appellant's medical condition did not affect his ability to provide lengthy evidence, but in his interview he did raise the fact that he was not fit.
- 11.** The seventh ground argues that the First-tier Tribunal finds that the appellant can seek medical assistance himself when the evidence in the medical notes shows that a friend contacting the GP and the GP brought him to the Crisis Team to be reassessed when he relapsed. It is argued that he could be at risk of suicide if returned to Egypt, and that it is pertinent that since receiving the decision of the First-tier Tribunal the appellant has tried to commit suicide by taking an overdose. Whilst the appellant could access medical treatment in the past in Egypt he is now less well, and contrary to the findings of the First-tier Tribunal he is not fit to work, as is set out in the report of Dr Galappathie.
- 12.** No Rule 24 notice was filed but Mr Lawson defended the decision of the First-tier Tribunal. He argued that there was no failure to consider the report of Dr Galappathie as the appellant had been treated as a vulnerable witness at paragraph 6 of the decision, which involved a consideration of the psychiatric report of Dr Galappathie and there was consideration of the report again at paragraph 15 of the decision when

considering whether the appellant's health conditions explained his inability to recall date and details, and thus the credibility of his claim in paragraphs 14 to 17.

- 13.** At the end of the hearing I informed the parties that I found that the First-tier Tribunal had erred materially in law as argued in the first ground. I set out my reasoning below. It was agreed by both parties that it was appropriate to remit the remaking of the appeal to the First-tier Tribunal with no findings preserved given that the error went to assessment of the credibility of the protection claim and there would be very extensive remaking.

Conclusions – Error of Law

- 14.** The report of Dr Galappathie is accepted as being one to which weight can be given at paragraph 22 of the decision, in the consideration of the Article 3 medical appeal. Dr Galappathie diagnoses the appellant with severe depression, generalised anxiety disorder and PTSD as set out at paragraph 21 of the decision. However when considering whether the appellant had given a credible history of coming to the adverse attention of the authorities as a suspected support of the Muslim Brotherhood the opinion of Dr Galappathie (set out at paragraph 106 of his report) that the appellant's PTSD is "clinically plausible and consistent with his account of experiencing trauma within Egypt" is not balanced in the appellant's favour when considering all of the evidence in the round with the factors listed at paragraph 14 of the decision, which the First-tier Tribunal Judge finds weigh against the appellant, before reaching a conclusion as to whether the history of persecution in Egypt is credible. This is exactly what the Court of Appeal found was an error of law in Mibanga. The medical evidence has not been seen to be evidence which is supportive of the history of persecution and has not been seen in the round as a positive in the appellant's favour, which it ought to have been given the conclusion of the First-tier Tribunal that Dr Galappathie was an appropriate expert who had written a report which was not challenged by the respondent.
- 15.** As agreed by the parties having found this error it is therefore appropriate that the decision is set aside in its entirety with no findings preserved. I do not therefore conduct a full consideration of the remaining grounds but note the following. I find that the First-tier Tribunal erred in law by failing to give reasons when stating that the appellant's involvement with the Muslim Brotherhood was vague and lacking in detail at paragraph 14(i) when as set out in the reasons for refusal letter he had said in his asylum interview that he was involved with volunteering and doing charity work for the Muslim Brotherhood, including giving money to families of Muslim Brotherhood members and buying equipment and medication for medical centres. I also find that it is not accurate to state that public prosecution document contains no mention of the appellant being affiliated with the Muslim Brotherhood when the document refers to the purpose of the sit-in which the

appellant is said to have attended being “to obstruct the transfer of power from President Muhammad Morsi al Ayyat following the June revolution that overthrew him and his group”, and given President Morsi was an Islamist affiliated with the Muslim Brotherhood organisation, and thus find that no adequate reasons are given for not giving weight to this document. It is also clear that in his asylum interview the appellant did raise issues of his medication/ mental health condition affecting his memory at his asylum interview, for instance in response to question 118 he states: “ I don’t know – My brain is stopped because of the fear” which is contrary to what is said at paragraph 15 of the decision where it is said that that the appellant’s claimed difficulty to recall details and dates is at odds with the information in his interview.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and all of the findings.
3. I admit the appellant’s new medical evidence in the Rule 15(2A) Bundle for the remaking hearing.
4. I remit the re-making of the appeal to the First-tier Tribunal to be determined de novo by a judge other than Judge of the First-tier Tribunal Thapar.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8th October 2024