Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/01753/2014**

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision Promulgated**
On: 30th January 2015	**On: 2nd February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Mohamed Ibrahim Eldessouki Ali Ismail
(no anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Bandegani, Counsel instructed by Kesar & Co Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Egypt date of birth 7th September 1978. He appeals against the decision of the First-tier Tribunal (Judge Brookfield) who on the 22nd August 2014 dismissed his asylum and human rights appeal[1].

2. The basis of the Appellant's claim was that he has a well-founded

[1] Appeal brought against a decision dated 17th March 2014 to remove from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999

fear of persecution in Egypt for reasons of his political opinion. The Appellant stated that he was a long-time supporter of the pro-democracy movement "Kifiya" and that this had resulted in his facing persecution including a three-month period of detention and severe ill-treatment in 2011. As a result of this detention the Appellant lost his job and permit to stay in Dubai, where he had been living. He had returned to Egypt but because the authorities were looking for him at his family home in Cairo he stayed with an aunt in Alexandria. The Appellant has also been an active supporter of the "6 April" movement. He came to the UK on a visit visa in April 2013 and was prompted to claim asylum after three of his friends were arrested and the police continued to visit to his family home looking for him.

3. The refusal letter is dated 17th March 2014. The Respondent does not accept the Appellant's account is true. It is noted that he gave inconsistent evidence about dates and his travel history. At the time that the claim was considered there was no supporting documentary or medical evidence.

4. By the time the appeal came before Judge Brookfield the Appellant had obtained such evidence. He relied on original documents issued by the police and prosecutors in Egypt, country background material, medical evidence and a report by Hugh Miles, an award-winning author and freelance journalist who has lived and worked in Egypt for many years. Mr Miles has contributed pieces to the BBC and Al-Jazeera. He was The Daily Telegraph's stringer in Cairo between 2004 and 2007. In the preface to his report he explains that in his work he has had personal contact with numerous figures in the "Kifiya" movement and has personally witnessed members of that group being attacked on demonstrations. Mr Miles was asked to consider the facts as they were put forward by the Appellant and comment on their plausibility in the context of the political situation in Egypt. He was further asked to examine the documents relied upon by the Appellant. His expert opinion in respect of the former was that Kifiya and 6th April activists can expect to be on the wrong end of the "most severe security crackdown in recent memory". He gives background and context to this comment and concludes: "if I was him I would be frightened". In respect of the documents Mr Miles gave several reasons why he concluded that they were most likely genuine.

5. The determination of the First-tier Tribunal summarises the Appellant's evidence. The findings begin by addressing the report of Mr Miles. His opinion that anyone perceived to be politically opposed to the government could face detention and torture is not accepted because he has not provided any recent examples of Kifiya members being arrested or detained. The determination returns to the Miles report at paragraph 10(xvi) where his views on the documentary

evidence are noted, along with some of the reasons he advances as to why he has reached the conclusion that he does. Of this the Tribunal concludes: "I note the appellant's expert has not offered any reasons for concluding that the copy documents he saw are genuine. I found the expressed opinion by the appellant's expert to be unreliable as he had not had sight of the original documents and gave no reason for his conclusions. I placed no weight on this opinion". As to his evidence that Kifiya and 6 April are regularly denounced in the Egyptian media, the determination apparently rejects it on the basis that the examples cited were from Twitter and YouTube, which are neither "impartial or independent". Overall the Tribunal is not satisfied that the Appellant is at risk in Egypt or that he has any political profile that will bring him to the attention of the authorities. The appeal is dismissed.

6. The grounds of appeal are that the First-tier Tribunal erred in failing to reach findings, failing to take evidence into account, failing to give reasons for findings and/or irrationality. In particular:

i) The finding that Mr Miles had failed to give reasons for his conclusion was demonstrably incorrect as he had given numerous reasons why he found the documents were likely to be genuine;

ii) It was irrational to place "no weight" on his opinion when neither his expertise nor objectivity had been challenged by the Respondent, nor by the Tribunal itself during the hearing;

iii) The mention of Twitter and YouTube illustrates a misunderstanding – these are not sources of information, but means of communications. The sources cited by Mr Miles were in fact mainstream Egyptian news outlets;

iv) The rejection of Mr Miles' opinion on the basis that he had offered no examples of Kifiya activists being recently arrested failed to take into account the instances that he has cited in the report, including the arrests of persons personally known to him;

v) There was overall a failure by the Tribunal to evaluate the evidence of Mr Miles and the Appellant "in the round".

Error of Law

7. At the hearing before me Mr McVeety for the Respondent conceded that determination could not stand. He agreed that the errors alleged in respect of the report of the expert were made out, and that these were material. I do not therefore need to set out in great detail why I agree.

8. Mr Miles was an expert whose expertise and objectivity were not subject to challenge. He had produced a detailed report, drawing not just on his own experience of living and working in Egypt, but on academic and media sources, and his own consultation of other Egyptians, including lawyers. He was entitled, for instance, to mention arrests he had seen with his own eyes, or the detention of people that he knows personally, in the course of his commentary on the general political situation in Egypt today. As to the documents he had given a good number of reasons why he considered them likely to be genuine. These reasons included the fact that the style, content and layout was consistent with the "hundreds" of documents that he has collated in his "bespoke library"; that colleagues including a lawyer had agreed that they looked genuine; that the signature, stamp etc all appeared in the correct place. He – and indeed his lawyer friend - had specifically considered whether these documents might be high-quality forgeries and had concluded that they were not. The First-tier Tribunal was not bound to accept the conclusion reached by Mr Miles about the documents, or indeed the potential risk faced by this Appellant. It could not however properly conclude that his evidence attracted "no weight". Mr McVeety correctly points out that this was not a straightforward case and that there were a number of reasons why the Tribunal could legitimately have rejected the Appellant's evidence. He conceded however that in this case it is difficult if not impossible to extricate any 'safe' findings of fact from the determination. That is because the Tribunal was bound to take all of the evidence in the round; if the Tribunal has erred in its approach to the expert evidence it follows that the remaining credibility findings are tainted. The determination is therefore set aside in its entirety.

9. The parties agreed that this must be a *de novo* hearing. Since this will require extensive fact finding, the parties were in agreement that this would most appropriately be done in the First-tier Tribunal. The matter is therefore remitted to the First-tier Tribunal where I will hear it.

Decisions

10. The determination of the First-tier Tribunal does contain an error of law and it is set aside.

11. The matter is to be remade in the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
30th January 2015