



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04494/2017

THE IMMIGRATION ACTS

Heard at Field House
On 5 March 2018

Decision & Reasons Promulgated
On 17 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[E H]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Moran, counsel instructed by Alex Moran Immigration & Asylum
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Egypt, date of birth [] 1970, appealed against the Respondent's decision, dated 27 April 2017, to refuse an asylum claim. His appeal came before First-tier Tribunal Judge O'Keefe (the Judge) who, on 26 June 2017, dismissed the appeal under the Refugee Convention and Articles 2 and 3 ECHR. On 8 September 2017 Upper Tribunal Judge Rintoul gave permission to appeal. On 20

December 2017 I promulgated my decision in which I found there was an error of law in that the Original Tribunal had failed to give adequate or sufficient reasons. Accordingly I directed that it be remade in the Upper Tribunal, before me. Further directions were given which led to an additional bundle being produced by the Appellant which I gave leave for at the hearing on 5 March 2018.

2. The additional bundle consists of a Facebook profile for the Appellant from about three months ago as well as photo shots of a play taking place in London in which the Appellant appeared possibly as the accuser of the nominal leader who was variously described as an insane mass murderer. The play was promoted under the name "The Trial of the Tyrant" by the Egyptian Revolutionary Council. The essential character in the play is the President of Egypt, Mr Sisi.
3. Some translations of the text that accompanied the photo shots show that they are of opposition to the President of Egypt. The role the Appellant plays in the play is as a character called Majdy Alabd Al Ghaffar but the full nature of his appearance and role is not particularised but it is said by Mr Moran that it is consistent with the Appellant's opposition to the current authorities and consistent with his support for the Muslim Brotherhood in Egypt.
4. The Appellant essentially puts his claim for protection on the basis that he is a refugee *sur place*. His involvement in politics comes partly through his Facebook posts which were made between the period July 2013 and April 2017. Secondly, there is his involvement with writing satirical articles or news for an online website called Al Gornal involving the period from February 2015 to January 2017. These end dates reflect the nature of the claim that he made. His editorial activities are disputed but there is no issue that he was a contributor to Al Gornal and there is evidence that he was in communication with the chief editor of that website, one Ms Ayat Orabi. In addition there are photographs of the Appellant attending demonstrations in London.

5. The Appellant therefore says that through his Facebook posts or through his activities with Al Gornal that he will be known to the Egyptian security forces and intelligence services. He knows that Ayat Orabi, who lives in the United States now, has been the subject *in absentia* to a trial for which she was sentenced to five years' imprisonment followed by, effectively, five years of house arrest. If she returns to Egypt there is no issue that she would face hardship and indeed imprisonment with little prospect of justice. The Appellant, who was historically the subject of an arrest warrant in 2014, which he said adds nothing to the matter now because it is his activities since he has been in the United Kingdom. Whilst he is of less significance than Ayat Orabi he claims the fact is he will through his Facebook and involvement with websites be known to the authorities and at risk of being seized on a return to Egypt.
6. In support of his case he produced a number of country information and background material which goes to show the extent to which very large numbers, of the order of 35,000 or more, who have been arrested and detained by the authorities in Egypt in the period through to 2017. He therefore has no confidence that he would be treated in any different way to the many who have been held, detained and ill-treated, including some who have died in detention. Also, there are articles produced in relation to press freedom in Egypt. It is quite apparent that the authorities in Egypt are happy to categorise stories about Egypt which they do not like as essentially being 'false news', or 'fake news' stories giving rise to adverse attention upon either the website and/or the contributor who is named. In this case there is no doubt that for the articles on Al Gornal the Appellant has been identified in name and indeed there are photographs as well of him such that he says "there really can be little doubt I would be identifiable on a return to Egypt".
7. In addition, there are articles about the general repressive nature of the Egyptian authorities and the risks they pose to persons perceived as being anti the authorities. The Appellant and his wife have been in the United Kingdom now since 2004 or thereabouts and they have two children. The Appellant says that he believes his

profile has changed since the early days before he came to the United Kingdom and that he believes his wife, who is essentially his dependant, faces, through events in Egypt, risk on return.

8. In something of a sub-plot which the Secretary of State relies upon, the Appellant's wife, Amira made, before her visa had expired in January 2015, an asylum claim. On the submissions made she was poorly advised in the manner in which she presented her case that FtT Judge Mace (the Judge) who considered her appeal was unimpressed and dismissed those appeals claiming protection. The Appellant was not involved in that appeal and gave no evidence. The outcome it is submitted reflects on the poor preparation and presentation of her claim. Whether it would have succeeded is quite another matter and I express no view upon it.
9. The Respondent, with reference to the case of Devaseelan, sought to rely upon the Judge's decision as demonstrating an unlikelihood of the Appellant giving credible evidence about his risk on return. The Appellant gives an explanation as to why he was not involved, in his wife's claim, how his claim has changed over time and the consequence of the support he gives for the Muslim Brotherhood: Which is contrary to the objectives of the military regime in Egypt. Ultimately, therefore, the Appellant maintains his belief that the President of Egypt, Mr Sisi, is not only robbing and oppressing a generation of Egyptian people but he is depriving them of democratic ways and outlets and reinforcing the vested interest of the state. His opinions written in his satirical fashion may be understood as satire by Egyptians although, on the face of it, is not as we in the United Kingdom might recognise, satire. I have no doubt to those in the know and persons who understand politics in Egypt the satirical nature of the articles is understood. As to the Appellant's articles written with a factual basis to them and essentially journalism, they again are significantly critical of the current administration of Egypt.
10. I have taken into account the adverse views that the Respondent reflected in the original Reasons for Refusal Letter but I do not agree that the Appellant's *sur place*

claim is founded upon a false basis. I do not have to resolve the issue of whether the arrest warrant is a reliable document but I do not find it has been produced to support and buttress a false claim being made. Rather, if it is to be the subject of criticism, it does not seem to me that falls immediately at the Appellant's door given the subsequent *sur place* activities which are really unchallenged. Whether or not the Appellant's motive is in the sense contemplated by the case of *Danian* is very difficult to say but ultimately *Danian* [1999] EWCA Civ 3000 demonstrates that the broad considerations that need to be embarked upon in assessing a claim true or false, concocted or otherwise, *YB (Eritrea)* [2008] EWCA Civ 360 makes the point about *sur place* activities and how they may be construed and understood to indicate, whether or not the claim is true .

11. I have to assess whether or not the Appellant's activities in the United Kingdom expose him to the risk of persecution or serious harm if returned. I have to consider whether or not the possibilities of an adverse interest being taken in him present a real risk. In the light of *YB* and the helpful discussion therein concerning such risk, I reach the conclusion that the Appellant's UK-based activities do give rise to a risk on return. I apply of course the low standard of proof to be found in the case of *Sivakumaran* [1998] Imm AR 147 and *Karanakaran* [2000] EWCA Civ 11 in terms of assessing the real risk. I therefore find, in the light of the case law, the background material and the Appellant's claim, bearing in mind the low standard of proof that the Appellant has done sufficient to show that his conduct gives rise to the likelihood of real adverse interest being taken in him because of his political opinions or use of the Facebook website and Al Gornal on line.
12. Mr Moran took me to other websites where people who have been involved with them are the subject of adverse attention by the security forces in Egypt. I find those lists of names consistent with the kind of treatment that the authorities perceive anyone critical of them as being willing to take. I find also that the fact that Ms Ayat Orabi has a high profile is not the end of the matter. The fact that the authorities regard it worth the publicity pursuing her to discourage others *in absentia* does not

mean that there is some good reason why they should not pursue a lesser contributor to Al Gornal such as the Appellant. I therefore have treated the decision of Judge Mace in the context of the evidence, such as it was before him, not knowing the degree to which it really touched and affected the Appellant's conduct in the UK. I take into account that the new matters have moved this along and so it is not simply a comparison of like for like as between his wife and him in this appeal. I found the Appellant claim credible, consistent with the background evidence and the documents he produced. I find his *sur place* activities are likely to have been seen and/or heard of by the Egyptian security services.

13. Accordingly, I concluded that there is a real risk of persecution on account of the Appellant's political opinions from the Egyptian State and that there is no sufficient protection from the state to which he can have recourse and that internal relocation does not represent a reasonable option to avoid the adverse interests of the State. In concluding those matters I have taken into account the Facebook pages, the evidence of support of Muslim Brotherhood, the authorities wish to crush adverse criticism, the consequences of writing anti-regime articles and posting those on Al Gornal. I do not think the Appellant was ever formally an editor of Al Gornal but I think he, as a contributor, had the opportunity to express his views which he did to Ms Orabi. In the climate which does not seem to be in abeyance of political life in Egypt, it is clear that opponents of the Sisi regime are regularly arrested, detained, tortured and sentenced to long prison terms for political crimes. Therefore I find the Appellant faces the real risk of danger of persecution and proscribed ill-treatment contrary to Article 3 ECHR by the State, on return to Egypt.

NOTICE OF DECISION

The appeal is allowed under the Refugee Convention and/or Article 3 ECHR

An anonymity order is appropriate in the circumstances of this case.

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

A fee of £140 was paid by the Appellant and the appeal has succeeded on the basis of materials advanced and I find that a fee award in that sum is appropriate.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge Davey