



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13406/2017

THE IMMIGRATION ACTS

Heard at Field House

**On 28th August 2018
and 13th November 2018**

**Decision & Reasons
Promulgated
On 27th November 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**A E
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett on 28th August 2018 & Mr A Gilbert on 13th November 2018 (both instructed by Wick & Co Solicitors)

For the Respondent: Mr L Tarlow on 28th August 2018 & Mr T Wilding on 13th November 2018 (both Senior Home Office Presenting Officers)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant who is a national of Egypt born on 1st February 1986. The Appellant had made a protection claim on the basis that he would be at risk of persecution on return to Egypt on account of his affiliation to the Muslim Brotherhood. The

Secretary of State refused his application on 1st December 2017. The Appellant's appeal against that refusal came before First-tier Tribunal Judge Freer sitting at Taylor house on 12 February 2018. In a Decision and Reasons promulgated on 27th February 2018 Judge Freer dismissed the appeal on all grounds.

2. The Appellant sought and was granted permission to appeal by the Upper Tribunal on 28th June 2018. The matter first came before me on 28th August 2018 to decide whether the First-tier Tribunal had made an error of law and if so whether and to what extent the Decision and Reasons should be set aside.
3. The grounds had asserted that the Judge had acted in a procedurally unfair manner in making various comments throughout the Decision and Reasons as to, for example, why the Appellant had not left Egypt and travelled to another Middle Eastern country as his family members had done. I do not find that those comments were material to the Judge's conclusion or credibility findings. However, I did find there was an error of law on the basis of an inadequate consideration of risk on return as a member the Muslim Brotherhood in the current political climate in Egypt and the Government view of the Muslim Brotherhood. With the agreement of both representatives I adjourned the matter on that day to be listed for a resumed hearing to decide the sole issue of whether a person with the Appellant's profile as found by the First-tier Tribunal would be at risk on return. Either party was at liberty to file additional documents in relation to country information.
4. The Appellant's representatives filed a fairly slim bundle for the purposes of the resumed hearing. Unfortunately, they had not heeded my indication that I would be dealing with one single issue, namely risk on return for an ordinary member of the Muslim Brotherhood and sought to put in further evidence regarding the Appellant's background. I indicated to Mr Gilbert that that information was of no relevance to the issue that I was to decide. The only documents relevant to the issue that I had to decide were an expert report provided by a Dr Imranali Panjwani and another document concerning the Muslim Brotherhood.
5. Additionally, Mr Gilbert provided me with a small bundle of authorities, YB (Eritrea) [2008] EWCA Civ 360, a decision of Westminster Magistrates Court in the case of the Queen v Viscount St Davids, the Home Office "Country Policy and Information Note-Egypt: Muslim Brotherhood (July 2017) (CPIN) and KS (Burma) [2013] EWCA Civ 67.

The Appellant's profile

6. The Appellant has a long-standing affiliation with the Muslim Brotherhood, as has his family. He has not attended violent demonstrations and is not a violent person nor does he advocate violence. He has not been in any position of seniority in the organisation. In the UK he has attended

demonstrations and spoken at only one and that a small one. He has posted on Facebook posts supporting the Muslim Brotherhood and against the regime. That Facebook account has been closed although it is not possible to say by whom, although the Appellant claimed it was by the government in Egypt.

7. The First-tier Tribunal had found that there was no evidence of surveillance carried out by the Egyptian authorities such that the Appellant's activities would be known.

The Hearing

8. I gave an indication at the outset that I was singularly unimpressed with the "expert" report. The author gave no indication as to how he was an expert on Egypt. He is an academic who has written a number of reports but does not detail how it is that he has any expertise with regard to Egypt. Furthermore, he has not confined himself to the issue before the court but has strayed into making submissions on the Appellant's behalf and reopening matters which I have not set aside.
9. In his submissions Mr Wilding confined himself to criticising that expert report and his criticisms largely were in line with my own concerns.
10. Mr Gilbert took me through various pieces of evidence concerning the situation in Egypt. He said that the relevant issues for the Appellant were his previous behaviour in Egypt including his family's profile as supporters of the Muslim Brotherhood, his behaviour in the UK and on-line activity and how he would behave in future in Egypt noting that the Appellant has been a long-standing member of the Muslim Brotherhood and been involved in activities for a long time.
11. Mr Gilbert took me to the CPI N document referring to the following passages.
12. At 2.2.4 it is stated that under the Penal Code, the government is able to detain anyone suspected of membership of the Muslim Brotherhood. However, in practice arrests and prolonged detentions have primarily been of high and mid-level leaders, and those taking part in protests against the government which became violent.
13. At 2.2.5 it states that the authorities are unlikely to have the capacity, capability or interest in seeking to target all persons associated with the Muslim Brotherhood given the size and variety of its membership and support base. The evidence does not establish that merely being a member of, or, in particular, a supporter of the MB, or being perceived to support the MB, will place a person at risk of persecution or serious harm.
14. At 3.1.4 it says that low-level, non-political or inactive members and supporters, or those perceived to be supporters, are not generally being

targeted and it is unlikely that they will be able to demonstrate a real risk of persecution. The onus is on the person to demonstrate that they are at risk of persecution, however each case will need to be considered on its facts.

15. Those statements are however contradicted by the rest of the evidence.
16. At 6.1.1 the US State Department report covering events in 2016 is quoted stating that according to Article 86, membership of a designated terrorist group may incur penalties of up to 5 years imprisonment. Article 86 also criminalises the distribution of materials, in writing or in speech, pertaining to a proscribed organisation or in service of its objectives.
17. At 6.2.21 there is reference to the DFAT report of 2017 which states that tens of thousands of Brotherhood members have been arrested and detained since July 2013 and courts throughout the country have handed down a series of harsh sentences (including the death penalty) in mass trials of those charged with participating in violent protests or riots following the military takeover. Mr Gilbert referred to the fact that a person charged was not necessarily present in a violent protest.
18. Further, in the same paragraph DFAT assesses that Muslim Brotherhood leadership figures and members who continue to pursue political activities actively either within or outside the party structure are highly likely to be arrested and prosecuted. Ordinary inactive members, party supporters and those with family links to members face a lower risk of being targeted for arrest, but may be subject to arbitrary arrest during wider security actions. They are likely to come under the close attention of the authorities and be subject to surveillance and monitoring of their activities.
19. Mr Gilbert drew my attention to the fact that the Appellant was not inactive.
20. At 6.2.4 Amnesty International's report is referred to, stating that security forces arrested 11,877 members of "terrorist groups" between January and the end of September 2015, according to the Assistant Minister for Public Security at the Ministry of the Interior. The crackdown was thought to include members and perceived supporters of the Muslim Brotherhood and other government critics. The authorities previously stated that they had arrested at least 22,000 people on such grounds in 2014. It goes on to say that in September 2015 president al-Sisi pardoned 100 men and women including journalists and scores of activists imprisoned for participating in protests. The pardon did not extend to imprisoned leaders of Egypt's youth movement or Muslim Brotherhood leaders and that at least 3000 civilians stood trial before unfair military courts on "terrorism" and other charges alleging political violence. Many, including leaders of the Muslim Brotherhood were tried in mass trials. Amnesty International says military trials of civilians are fundamentally unfair.

21. At 6.2.8 it is said that thousands of Muslim Brotherhood leaders and supporters have been imprisoned - the group said in 2015 29,000 of its sympathisers were in custody.
22. At 6.2.12 Human Rights Watch stated that military courts have tried at least 7420 Egyptian civilians since October 2014 and that most defendants were sentenced after mass trials that violated fundamental due process rights and some courts relied on confessions extracted under torture according to relatives.
23. At 6.2.13 it is said that civil society organisations estimate that as many as 40,000 people were being detained for political reasons as of 2016, most of them for real or suspected links to the Muslim Brotherhood.
24. At 6.2.16 Amnesty International said in July 2016 that thousands of people in Egypt are currently detained without trial or serving lengthy prison sentences imposed after unfair trials on account of their real or perceived opposition to the government of President al-Sisi. Supporters of ousted President Mohammed Morsi as well as leaders and members of the Muslim Brotherhood continue to be particularly targeted. It then says that, according to the government, its security forces arrested almost 22,000 suspects in 2013 and 2014, including some 3000 top and middle level Muslim Brotherhood leaders and members. In 2015, according to the Ministry of Interior, the security forces arrested almost 12,000 further suspects, mostly MB members and supporters. It goes on to say that some rights groups estimate that as many as 60,000 people have been detained for political reasons since July 2013 and the 10 new prisons are reported to have been built to accommodate the rising numbers of detainees.
25. At 6.2.18 it is reported that Janes reported in June 2017 that the authorities arrest people for alleged Muslim Brotherhood ties on a regular basis.
26. At 6.3 there is reference to disappearances and at 6.3.2 it is stated most of those who disappeared were males ranging from adults in their 50s to boys aged 14.
27. At 6.3.4 Amnesty International said that most of the victims of enforced disappearance were supporters of former President Morsi and it also indicates that there is a reported average of three or four people subjected to enforced disappearance each day since the beginning of 2015 and that many of the detainees who suffered abuses were accused of sympathy with or membership of the Muslim Brotherhood.
28. Mr Gilbert submitted that all of the points identified above from the CPIN indicated that the Secretary of State's claim that the risk is only to high-level members of the Muslim Brotherhood is quite simply not made out.

29. Mr Gilbert then took me to the bundle submitted on the Appellant's behalf for the First-tier Tribunal hearing.
30. He referred me to a Human Rights Watch report of September 2017 which states that torture has long been endemic in Egypt's law enforcement system and that since 2013 when Egypt's military removed the country's former President, Mohammed Morsi, the Interior Ministry's regular police and National Security agency have used torture on a systematic and widespread basis against perceived dissidents to force them to confess or divulge information or to punish them.
31. He referred to a report from the Immigration and Refugee Board of Canada entitled "Egypt: treatment of members of the Muslim Brotherhood, including leaders, returnee members and suspected members, by authorities following the removal of President Mohammed Morsi" dated 11th June 2017. That document states that in December 2013 it was reported that the government declared the Muslim Brotherhood a terrorist group thereby criminalising all its activities, financing and even membership of the group.
32. Freedom House's Freedom in the World 2017 report states that large numbers of Muslim Brotherhood members and supporters, including nearly all of the organisation's senior leadership and Mohammed Morsi himself were arrested following the coup and that the arrests continued through 2016.
33. The report goes on to state that there had been mass trials and that hundreds of Muslim Brotherhood members and supporters have been put on trial and given harsh sentences in multiple cases. Rights advocates have repeatedly criticised the mass prosecutions saying they lack guarantees for a fair trial. Three defence lawyers had stated that the prosecution had not put forward any evidence implicating any individual defendant and that the court prevented defence lawyers presenting their case or calling witnesses. It is said that lawyers are absent during trial and one defence lawyer said that no defendants were present in court. There is further information that according to Human Rights Watch in a trial it reviewed, the State presented little evidence that the defendants had done anything but spread news about a mass sit in opposing the coup or organise and publicise peaceful opposition to Morsi's removal.
34. Amnesty International had said that men were held incommunicado before the trial and that the men had wounds when produced.
35. This evidence, Mr Gilbert submitted, indicated that it was not just those involved in violent opposition who were targeted nor was it just the leaders.
36. The same document reports that in February 2017 a Reuters article had said that human rights groups estimate that about 40,000 people had

been detained for political reasons since Morsi was deposed. There is further reference to the enforced disappearances also.

37. Mr Gilbert referred me to another document which indicated that at least 240 people from opposition parties and political youth groups in 17 cities had been arrested in relation to comments they posted that were critical of the Egyptian president and referred to Article 28 of Law 94 which states that “any person who promotes or prepares to promote, directly or indirectly, the commission of a terrorist crime... whether through writing, speech, or any other medium... Shall be imprisoned for five years.
38. Mr Gilbert then took me to a document entitled Egypt’s Country Profile dated 2017 which referred to the government’s surveillance of and behaviour with regard to social media. It is said that Internet freedom declined dramatically in 2017 after the government blocked dozens of critical new sites and there was a crackdown on encryption and circumvention tools. It says that security forces detained individuals for criticising the government’s human rights record and mocking president al-Sisi on social media and several had been arrested or sentenced for allegedly administering Facebook pages that poked fun at government officials or expressed legitimate opposition to their policies.
39. There is reference to the Egyptian government having centralised Internet infrastructure and fibre-optic cables to create highly controllable choke points. There is reference to the authorities blocking the websites of various tools which help circumvent censorship and that a satirical Facebook page with over 800,000 followers was closed down after poking fun at the President. It is also said that in December 2016 the Ministry of Interior claimed it shut down 163 Facebook pages and arrested 14 administrators for allegedly “inciting people to commit acts of vandalism against State institution and citizens”
40. There is reference to a rising number of arrests for social media posts, including satirical images and comedy videos and it goes on to say that digital activism and political organising have been largely subdued over the past several years due to fears of arrest, harsh jail sentences and even murder by police forces while attending protests. It says that Egyptians continue to face heavy penalties for their on-line activities.
41. It goes on to say that surveillance is a significant concern and that research and leaked documents have indicated that the Egyptian authorities have purchased or received surveillance equipment from international companies and that one company was appointed over another because it offered to provide access to its consumer data.
42. Mr Gilbert also made reference to the expert report but I indicated to him that I could attach little weight to that report as it was highly subjective and there was no evidence of the author’s expertise.

43. Finally, in his submissions, Mr Gilbert argued that the Appellant had a long-standing affiliation to the Muslim Brotherhood. He had attended demonstrations in the UK and posted articles on Facebook. There was adequate evidence to indicate that the authorities did use surveillance and in that regard he referred me to YB (Eritrea) and in particular paragraph 18 of that case which indicates that where a government has the objective of suppression of political opponents then it requires little or no evidence or speculation to arrive at a strong possibility and perhaps more that its foreign legations not only film or photograph its nationals who have demonstrated in public against the regime but have informers among expatriate opposition organisations who can name the people who are filmed or photographed. Similarly, YB (Eritrea) states that it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the Internet for information about oppositionist groups.
44. Mr Gilbert referred me to the Westminster Magistrates Court judgement only to indicate that there is no such thing as a private Facebook page. Anyone who posts on Facebook, even where it is available only to their “friends” is subject to onward publication by those friends sharing it with other friends and it thus becomes far more widely available. Essentially, there is no such thing as a private Facebook page.
45. Mr Gilbert argued therefore that this Appellant is a person who has had links to the Muslim Brotherhood for many years and his family were also supportive of that organisation. In the UK he has attended a number of demonstrations, albeit non-violent and that based on the information that he had referred me to it is highly likely that those demonstrations are monitored using modern technological methods, relying on what was said in YB (Eritrea).
46. The evidence in this case, Mr Gilbert urged me to find, demonstrated that the Egyptian authorities, being so determined to destroy the Muslim Brotherhood, were such a government as referred to in YB (Eritrea) and that they would without doubt be carrying out surveillance.
47. He also argued that the Appellant’s online activity, albeit that his Facebook page has been closed, would also put him at risk given the government’s monitoring of the Internet.
48. Mr Gilbert argued, on the basis of the country information he had referred me to that the Appellant’s support for many years of the Muslim Brotherhood, his attendance at demonstrations in the UK and Facebook posts and his continuing support for that organisation would place him at risk on return. His support for that organisation held, as it has been over a number of years, is something which he would continue upon return.
49. Mr Wilding did not make any further submissions in response.

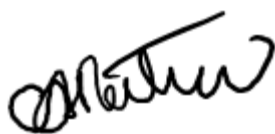
50. I have already indicated that I share Mr Wilding's low opinion of the expert report and that I place little reliance upon it. However, the other evidence that Mr Gilbert took me to as I have set out above I do find to be persuasive. While there is reference to only leaders and high-level members of the Muslim Brotherhood being targeted, there is also a great deal of evidence that any association with that organisation is enough to put a person at risk. It seems clear on the basis of the evidence I have that the Egyptian authorities are demonstrating a determination to completely destroy the Muslim Brotherhood and that they are meting out very severe punishments to anyone they come across who supports it. This is clearly designed, not only as a punishment to those but as a deterrent to others from continuing their support. On the evidence that I was taken to I am also satisfied that the Egyptian authorities will be monitoring matters outside their embassy in the UK, that they are monitoring the Internet and the Appellant having been involved in both, I am satisfied, bearing in mind the low standard of proof, that there is a real risk that he will have been identified or will be on return. The evidence does not show that it is only high-profile members of the Muslim Brotherhood who are risk, but anybody perceived to have links with or to be supportive of the organisation.
51. For all of the above reasons and bearing in mind the low standard of proof I find this Appellant would be at risk on return to Egypt's because of his affiliation with, support of and membership of the Muslim Brotherhood.

Decision

52. The appeal is allowed.

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
2018

Date 16th November

