Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00416/2020**

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre (remote) **Decision & Reasons Promulgated**
On: 28th October 2020 **On: 01st December 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NS
(anonymity order made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: **Mr I. Meikle, Counsel instructed by Ferial Solicitors**
For the Respondent: **Mr A. McVeety, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Egypt born in 1991. He appeals with permission against the 3rd June 2020 decision of the First-tier Tribunal (Judge JC Hamilton) to dismiss his appeal on asylum and human rights grounds.

Anonymity Order

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential

Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Background and Matters in Issue

3. The basis of the Appellant's claim to protection was that he has a well-founded fear of persecution in Egypt for reasons of his imputed political opinion, *viz* supporter of the Muslim Brotherhood. He further claimed to have evaded military service, disobeyed orders and twice deserted, and to have been convicted *in absentia* in respect of these matters, receiving a sentence of 15 years' imprisonment. The particulars of that claim were that having been drafted in 2011 the Appellant had been ordered to fire upon civilian protestors during the uprising against President Mubarak; rather than doing so he had run away.

4. On appeal to the First-tier Tribunal the Appellant relied *inter alia* on a report prepared by journalist and country expert Hugh Miles who opined that the Appellant's claim was plausible in light of what he knows about conditions in Egypt and the uprising against Mubarak; Mr Miles further stated that anyone with a perceived association or sympathy with the Brotherhood faces a real risk of harm. The Appellant further relied upon a number of documents which purported to corroborate his claims.

5. The First-tier Tribunal identified several discrepancies in the Appellant's evidence from which it drew adverse inference. These related to when he joined the army and when the alleged desertion occurred [§56-62], whether he could obtain identity documentation from Egypt [§54], when and how the Appellant became aware of the sentence against him [§71] and the economic status of his family in Egypt [§75]. The Appellant's claim to have been targeted because he was a support of the Brotherhood contrasted with the country background information which indicates that sympathisers and supporters are not at risk [§77] – nor was his own expert able to support his claim since he only referred to cases involving "quite high profile" members and their family members [§79]. The Tribunal did not expressly reject the Appellant's evidence that he is a regular advocate for the Brotherhood at Speaker's Corner in London, but it was not satisfied that there was a real risk that he could have been identified as such by the Egyptian authorities [§86]. It found that if he were as committed as he claims he would have attended other events. Overall the Tribunal was not prepared to accept that the Appellant was who he says he is, a supporter of the Brotherhood, that he deserted the army, was sentenced to prison or that he participates in "anti-government activities" in London. The appeal was therefore dismissed.

6. Before this Tribunal the Appellant contends that the decision of the First-tier Tribunal is flawed for the following material errors of law:

   i) In misinterpreting/failing to have regard to the totality of the country background evidence which indicates that supporters of the Brotherhood do face persecution in Egypt ("the supporter issue")

   ii) In its assessment of the evidence on criminal penalties the Tribunal erroneously conflated those applicable to desertion with those imposed for draft evasion ("the desertion issue"); and

   iii) Failing to give reasons/adequate reasons in respect of the Appellant's *sur place* activities and the likelihood that they will have come to the attention of the Egyptian state and be perceived as anti-government ("the surveillance issue").

Error of Law: Discussion and Findings

7. My first observation would be that in general terms, this First-tier Tribunal decision is cogent, detailed and fair. This is not a case where the Tribunal has rejected everything that the Appellant has to say. To the contrary the Tribunal rejected the Respondent's criticisms of several aspects of the evidence. It accepted, for instance, that the Egyptian documents had been sent to the Appellant's solicitor [§48], that the Appellant's descriptions of the injuries he sustained after being beaten during military service were consistent and consonant with the country background material [§65], and that it was plausible that the Appellant might have mistakenly placed some faith in the fact that the Muslim Brotherhood had come to power [§67]. The Tribunal reminded itself that if a witness fabricates one part of an account it does not necessarily mean that the entire account can be dismissed [§74] and that "memory is a malleable construct" which can be unreliable [§44].

8. The question for me is not only whether the discrete criticisms made by Mr Meikle are made out, but whether they are of sufficient materiality to warrant interfering with the decision below. This was the real matter in issue between the parties. As I explain below, Mr McVeety for the Secretary of State was prepared to accept that there were some difficulties with the decision of the First-tier Tribunal, but hotly disputed that they were such that the decision had to fall: Mr McVeety submitted that where so many reasons were given by the Tribunal for rejecting this claim errors in respect of a few of these reasons will not be material. Mr Meikle on the other hand submitted that a credibility assessment is by its nature a global appraisal, and that where a decision-maker has embarked on his assessment in, for instance, misapprehension of the facts, then that appraisal is necessarily infected by error.

9. Against that background I evaluate each of the three grounds before reaching a conclusion on whether the decision must be set aside.

Ground (i): The Brotherhood

10. I start with the 'supporter' issue. The whole basis of the Appellant's case was that as a supporter of the Muslim Brotherhood he faced disproportionate punishment and problems during his time as a soldier in the Egyptian army. He disobeyed orders, deserted, and faced beating and persecution because of his political convictions. The Tribunal gave, as I summarise at my §5 above, several reasons why it did not find the burden of proof discharged in respect of these claims. Mr Meikle submits, however, that central to the Tribunal's analysis was its finding at its §82:

> "I do not accept the Appellant has shown that generally, low-level supports of the MB or its sympathisers are at any real risk of significant mistreatment in Egypt".

That being the Tribunal's view of the objective situation, Mr Meikle submits, it coloured the view that that the Tribunal took to the Appellant's claims. At its §77, for instance, the Tribunal contrasts the Appellant's evidence that he was scared of the authorities with background information – relied upon by the Respondent - that as a 'mere' supporter he had no reason to be afraid.

11. Mr Meikle submits that the Tribunal's conclusion on this matter was wholly contrary to the evidence before it. He begins with the CPIN dated July 2017 entitled *Egypt: Muslim Brotherhood.* Several sources are cited in the grounds but section 6.2.8 serves as an example of the kind of evidence that Mr Meikle says the Tribunal appears to have overlooked:

> 6.2.8 A House of Commons Library research briefing of February 2016, based on a range of sources, summarised:
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> > 'The Sisi government, supported by the anti-MB Gulf States of Saudi Arabia and the United Arab Emirates, has conducted a vigorous crackdown on supporters of the MB. The MB was declared a terrorist organisation in December 2013 and its assets were confiscated, while its political wing, the FJP, was later dissolved. Human Rights Watch **reported that probably as many as a thousand of its supporters were killed** during demonstrations after the toppling of President Morsi... '**Over 40,000 people were detained or indicted** in less than a year after the coup and reports of torture and disappearances at the hands of the police and other security forces were widespread… The government has made it much more difficult to hold demonstrations and easier for the police to ban them. Many of the arrests are for violations of the new framework, in place since November 2013... 'In June 2014 three Al-Jazeera journalists were given jail sentences on terrorism-related charges. Al-Jazeera is regarded as being close to the MB. By summer 2014, the human rights group Amnesty International described the decline in the protection of human rights as 'catastrophic'. '**Thousands of MB leaders and supporters have been imprisoned** – the group said in 2015 that 29,000 of its sympathisers were in custody.'

(Emphasis added).

12. The expert too, had provided multiple examples of Brotherhood supporters, as opposed to members, suffering the consequence of that support. Although the Tribunal finds Mr Miles to have identified only "quite high profile" members experiencing problems, in fact, submits Mr Meikle, his report ranged wider than that.

13. I accept that the country background information that was before the First-tier Tribunal indicted that 'low-level' supporters of the Brotherhood have suffered politically motivated persecution in Egypt. I also accept that the First-tier Tribunal appears to have proceeded on the basis that this is not normally the case. The Tribunal here appears to have been adopting the Respondent's policy statement – that is to say her interpretation of the objective situation – expressed at 2.2.5 of the CPIN:

> '2.2.5 The authorities are unlikely to have the capacity, capability or interest in seeking to target all persons associated with the MB 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 is at risk of persecution or serious harm.'

14. The question is whether the Tribunal, in its acceptance of that policy, closed its mind to the evidence that notwithstanding the general position, it remains the case that *some* supporters of the Brotherhood do indeed suffer persecution, as the CPIN itself goes on to acknowledge at 2.2.6:

> '2.2.6 Whether a person is at risk of ill-treatment because of their involvement with, or perceived support for, the MB will depend upon their circumstances, profile, activities, and previous contact and difficulties with the state. The onus is on the person to demonstrate that they are likely to be of interest to the state and subject to treatment amounting to persecution or serious harm.'

15. The passage relied upon by Mr Meikle was at the Tribunal's §77, the relevant parts of which read:

> "In his March 2020 statement, the Appellant was clear that he is not and has never been a member of the MB but asserts that even people who only support or sympathise with the MB would be persecuted in Egypt….In contrast the background information about Egypt evidence relied upon by the Respondent in particular the CPIN, states sympathisers and supporters are not at risk"

16. As I have set out above, the CPIN was not as unequivocal as that: the Respondent's position is that there is no *general* risk, not that there is no risk at all. The CPIN in fact contained numerous examples of instances where supporters did face politically-motivated arrest and other forms of persecution. For that reason I find that the ground is made out. It is not sufficiently clear from the face of the decision that the First-tier Tribunal understood that the

claim was plausible, when the country background material was read as a whole.

Ground (ii): Desertion

17. This ground can be shortly stated, since Mr McVeety accepts that the alleged error was made out. At paragraph 81 of its decision the First-tier Tribunal says, in the context of the Appellant's evidence that he had received a sentence of imprisonment of 15 years, this: "the expert conceded that the sentence for desertion was normally 2-3 years". The parties before me agreed that this was not what the expert, Mr Miles, had said. The reference in the report to sentences of 2-3 years had related to draft *evasion*, as opposed to desertion from active duty, which is what the Appellant claims he did. As such the adverse inferences drawn by the First-tier Tribunal on this matter were unjustified. It had rejected as not credible the claimed sentence of 15 years because that was such a huge inflation of what it believed the normal punishment to be: in fact the maximum punishment for the Appellant's crime was death or "unlimited" detention. In that context 15 years appeared quite consistent with the law and practice in Egypt.

18. I accept that the First-tier Tribunal has here erred in fact. Whether that is material, that is to say whether it is an error such that the decision should be set aside, is a matter I consider below.

Ground (iii): Sur Place Activities

19. The final issue arising concerns the Appellant's evidence that in the past few years he has continued to voice his support for the Brotherhood by attending London's Hyde Park, possibly Speakers' Corner, to attend and participate in meetings there. The expert Mr Miles had opined that the Egyptian authorities would be monitoring such diasporic activities, and that it was reasonably likely that they would have identified the Appellant if he were in attendance there. He based that opinion on his own extensive experience of living in Egypt, his understanding of how the regime operates, and his relationships with dissidents both inside and outside the country. He included in his report a photograph he took at a protest outside the Egyptian embassy in London, showing a figure with a camera at a window, videoing the people below. Mr Miles confirmed that Hyde Park is frequently the site of meetings of Egyptian opposition groups: he has seen these meetings himself.

20. The Tribunal does not reject the Appellant's evidence about his attendance at Speakers' Corner. It does however reject the opinion offered by Mr Miles, on the basis that it is not "sufficiently cogent": it is found to be "poorly sourced". The Tribunal concludes: "I do not find the Appellant has shown the Egyptian government has the resources to monitor attendees, even regular attendees, at anti-government events".

21. Mr Meikle submits that in reaching these findings the Tribunal has failed to give adequate reasons why it rejects the evidence of Mr Miles on this matter. Mr Miles did explain where he got his information about the monitoring of diasporic activities. He did not obtain it simply from reading about it, in for instance human rights reports, but from his own knowledge, derived from many years working as a journalist and writer in Egypt – in the numerous conversations and interviews he conducted over that time. Importantly he also based his opinion on his own observations: having attended such protests in London himself he had seen state agents videoing and photographing the crowds. I do not think it is impermissible speculation on his part to conclude that the agents are doing this for a purpose, namely the purpose of identifying those present. Mr Miles has brought his own expertise to bear on this matter. As such it could not simply be dismissed as un-sourced: he was the source. Furthermore the evidence of Mr Miles was entirely consistent with the accepted country background information about what is happening in Egypt itself, namely a ruthless crackdown on any perceived opposition. As such this was a situation akin to that in Eritrea considered by Lord Justice Sedley in YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360:

> "18. As has been seen (§7 above), the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had "the means and the inclination" to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. **In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, 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 their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed**. Similarly 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. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive."

22. I am satisfied that this ground is made out.

Conclusion

23. Mr McVeety was quite right to point to the credibility problems faced by this Appellant. Aside from what might generously be called the 'section 8' issues, his chronology could quite fairly be described as a mess. It may be that in the final analysis the contradictions in the Appellant's account are such that he is

unable to discharge the burden of proof. I am however satisfied that the decision of the First-tier Tribunal cannot stand. I have reached that conclusion with some regret; it is in many respects an exemplary decision. The errors are however such that I cannot extricate them from the credibility findings overall. Had the Tribunal not misunderstood, as it appears to have done, the evidence about sentencing, and the evidence about the problems faced by Brotherhood supporters, the Appellant's claims may have seemed more credible than they were found to be. The standard of proof being what it is, I am unable to say that this was immaterial.

24. The parties were in agreement that if I found either or both of grounds 1 and 2 made out then the appropriate disposal would be to remit this matter to the First-tier Tribunal so that it may be heard afresh.

Decisions

25. The decision of the First-tier Tribunal contains errors of law such that it must be set aside.

26. The decision in the appeal is to be remade in the First-tier Tribunal.

27. There is an order for anonymity.

Upper Tribunal Judge Bruce
24th November 2020