Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10551/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 October 2020	**On 21 October 2020**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

K S M M
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the appellant: Ms M Bayoumi, Counsel, instructed by Ferial Solicitors
For the respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

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Introduction

1. This is the remaking of the decision in the appellant's appeal following my previous conclusion that the First-tier Tribunal had erred in law and that its decision should be set aside. The error of law component of my decision is appended to this remake decision. Whilst the First-tier Tribunal rejected the appellant's credibility, none of those findings of fact have been preserved.

2. The appellant is an Egyptian citizen, born in April 1978. He arrived in the United Kingdom on 7 February 2018 and made a protection claim soon thereafter. This claim was based on his support for the Muslim Brotherhood ("MB") and what was said to be the significant connections of his family members to this organisation. He claimed that following the coup against the government of Mr Morsi in 2013, he and his family were targeted by the authorities. Three brothers were detained, tortured, and died as a result. Another brother fled Egypt and went to live in Turkey. A nephew was detained and sentenced to a lengthy period of imprisonment but was taken out of the country by relatives. The appellant states that he was detained, interrogated, and tortured in 2017. In addition to this history, he claims that he has been attending anti-government events in the United Kingdom. He believes that the authorities would come to know of his activities here and that this would add to his problems. In essence, he asserts that if returned to Egypt, he would be of significant adverse interest to the authorities and would be at risk of detention and persecutory treatment and serious harm as a result.

3. The respondent does not accept any material aspect of the appellant's claim.

The evidence

4. In compliance with directions, the appellant produced a consolidated bundle, indexed and paginated 1-347. Amongst other items, the bundle includes three witness statements for the appellant; statements from the brother who currently resides in Turkey; supporting letters from a number of individuals connected to the MB; death certificates and other documentation relating to the appellant's family members; expert reports from Dr Rebwar Fatah (on the country situation) and Prof Ibrahim Ahmed (in respect of the authenticity of the documents from Egypt).

5. On 7 October 2020, the appellant filed and served witness statements for Prof Diaa Elmoghazhy and Mr Yasser Aly.

6. The appellant gave oral evidence with the assistance of an Arabic interpreter. Prof Elmoghazhy and Mr Aly were also called. A full note of the oral evidence is contained within my Record of Proceedings and I do not propose to set this evidence out at this stage. I will deal with relevant aspects of it when stating my findings of fact, below.

7. I was provided with evidence (in the form of an email and a letter) from two potential witnesses, Dr N Abosaif and Dr F Messahel, explaining their inability to attend the hearing. The former is a Consultant at University Hospital Birmingham and was on call. The latter is currently an inpatient at another hospital in that city. There has been no challenge as to the validity of the reasons for non-attendance.

8. Both representatives agreed that I should have regard to the most recent CPIN on Egypt, published in July 2020.

The issues in this appeal

9. At the outset of the hearing Ms Cunha confirmed that the respondent was not seeking to the issue of exclusion under Article 1F of the Refugee Convention. On the evidence before me, there was no proper basis upon which I should raise this matter of my own volition. Thus, exclusion has no part to play in this case.

10. The first core issue is that of the appellant's credibility. The second is whether, if his account is true, he would be at risk on return. A third issue is whether, even if the appellant has fabricated his claim, he would nonetheless be at risk on return as a failed asylum-applicant. Article 8 has not been pursued before me.

Submissions

11. Ms Cunha relied on the reasons for refusal letter dated 20 August 2018 and made additional oral submissions. The appellant had been vague in his evidence in relation to the policies of the MB and had not shown that either he or his family had been supporters and/or members of that organisation. She submitted that the family's middle-class background and economic activity was inconsistent with the MB's principles. Given that the appellant was well-educated, he should have been able to provide more detailed information. It was not accepted that the appellant had been detained in 2017. If, as claimed, he had provided information, it was not plausible that he would then have been tortured. Even if he had been detained, he was released and had been able to get through the airport on his own passport, indicating a lack of interest on the part of the authorities. It was also significant that none of the family's assets in Egypt had been seized.

12. The *sur place* activities added very little to the appellant's case. In respect of Prof Elmoghazy's evidence, it was hearsay and did not assist. The research said to have been undertaken as to the appellant's background was not reliable.

13. Ms Bayoumi relied on her skeleton argument. She submitted that the evidence, when taken as a whole, was consistent and plausible. The appellant had been candid as to his level of involvement with the MB. It

was plausible that the hospital in Egypt would not have provided confirmation of his injuries and/or treatment. The issue of the appellant's own political beliefs had to be viewed in the context of his family's committed support for the MB. The activities undertaken in the United Kingdom were not opportunistic. Ms Bayoumi submitted that Prof Elmoghazy's evidence was impressive. He had given it not as a friend, but as a senior figure in the political opposition based in United Kingdom. The release of the appellant from detention and his ability to get through the airport were both plausible in all the circumstances, as was the fact that the family's assets had not been seized. The appellant would be at risk at the point of return or soon thereafter. He will also be risk in light of the principles set out in HJ (Iran) [2010] UKSC 31; [2011] 1 AC 596 and RT (Zimbabwe) [2012] UKSC 38; [2013] 1 AC 152. Finally, she asked me to consider whether, given the appellant's relatively affluent background in Egypt, he would have come to the United Kingdom and fabricated a protection claim; the implication being that he simply would not have taken this course of action.

Findings of fact

14. I have considered the evidence before me as a whole and applied the lower standard of proof to it. A failure to refer to a particular aspect of the evidence is in no way an indication that I have left it out of account when reaching my findings.

15. For the reasons set out below, I find that the appellant has provided a truthful and reliable account of past events and his current circumstances in the United Kingdom.

16. It is right that the appellant did not specifically mention support for the MB in his screening interview. That has been relied upon by the respondent and, seen in isolation, it might be damaging to his overall credibility. However, he did state in terms that his problems in Egypt, including a detention of which he gives a precise date, was due to his opposition to the government. Further, I have of course considered screening interview in the context of a large amount of evidence that has been provided thereafter, ranging from the asylum interview to supporting witnesses.

17. The appellant did display in his asylum interview what the respondent acknowledged to be generally consistent evidence about the MB. In respect of his oral evidence, it is right that he did not provide particularly detailed information about specific MB policies. However, I agree with Ms Bayoumi's submission that he has been candid about his level of involvement with that organisation; he differentiated his role as simply a supporter from that of others, including his brothers, who were members. It is not wholly implausible that one member of a family would not necessarily have the same level of knowledge as others. Nothing that I have seen in the appellant's evidence is in fact contradictory to the principles and aims of the MB.

18. Following on from the above, Ms Cunha's submission that the family's support and/or membership of the MB was inconsistent with their status as relatively affluent traders is misconceived. I have been provided with no evidence to indicate that there is some fundamental incompatibility between the principles of the MB on one hand and engagement in economic activity on the other. Putting it bluntly, it would have taken cogent evidence from the respondent to have made good this particular point.

19. I accept the appellant's explanation that he tried, and failed, to obtain documentation from the hospital in Egypt where he found himself following release from detention. The whole tenor of the expert and country evidence on Egypt quite clearly shows that there is virtually no tolerance of any political dissent in that country, and that the authorities have taken and continue to take an extremely hard line approach to those known or perceived to be in opposition to the regime (see, for example section 4 of the CPIN). Dr Fatah's report, which has not been expressly challenged by the respondent and which I find to be deserving of significant weight, paints an equally bleak picture of the political landscape (see paragraphs 66 onwards). It is in my judgment at least reasonably likely that a hospital in Egypt would not have wished to issue an individual who had been detained and ill-treated by the authorities with a document confirming either the nature of any injuries sustained and/or their presence as an in-patient. Such unwillingness would, I find, be predicated on the desire for self-preservation and to avoid attracting the adverse attention of the authorities.

20. Ms Bayoumi was correct to identify patient records from the appellant's GP in the United Kingdom as providing some corroborative evidence of his past detention and ill-treatment (166 of the bundle). The details provided in the entry dated 23 July 2018 are consistent with what the appellant has told the respondent throughout his claim.

21. The appellant's claim to have been detained and tortured is entirely in keeping with the expert and country evidence (see the references stated in paragraph 19, above). The same body of evidence also supports the appellant's claim that political opponents of the regime have, since the coup in 2013, been systematically targeted, arbitrarily detained, and ill-treated. The "Assessment" section of the CPIN provides the respondent's own view of the country evidence and makes it extremely difficult for her to assert that the appellant's claim is anything other than generally consistent with what we know of the situation in Egypt.

22. The fact that assets belonging to the family have not apparently been seized by the Egyptian authorities does not, when the evidence is viewed as a whole, materially detract from the appellant's credibility. The country information certainly does suggest that assets seizures occur. It does not follow that the absence of such is incapable of belief, on the lower standard. Further, the appellant said in oral evidence that the personal business of one of his brothers, Ahmed, had in fact been confiscated,

although this was not part of the general family inheritance. As regards the position of another brother, Altuhami, it was apparent from the evidence that he was both disabled and not in any way an active supporter of the MB. It is plausible that he has not been the subject of targeting by the authorities.

23. There is nothing inherently implausible about the appellant being released from detention and being able to depart through the airport on his own passport. In respect of the former event, the country information indicates that detention is frequently carried out on an arbitrary basis. Thus, there is no reason to suppose that release would not also be effected on a similar basis. It is entirely misconceived to suggest that the Egyptian authorities would not ill-treat a detainee simply because the individual had provided some information. Such a submission runs contrary to the country evidence on Egypt and indeed the evidence relating to the attitudes of regimes which employ brutality detention the world over.

24. As regards the airport, the appellant has never stated that he was subject to formal legal proceedings. It is reasonably likely that he was not on any sort of a stop list and was able to leave Egypt in possession of his passport and a valid visa for the United Kingdom.

25. When the appellant was asked what he might do about his political views if returned to Egypt, his answer was clear enough: “under this regime no one can have any political views”. I find as a fact that the appellant is fully aware of the consequences of expressing anti-government views in Egypt, and that this would be a, if not the, reason for him concealing his opinions.

26. I turn to the corroborative evidence, which in my view is significant. I have already mentioned Dr Fatah’s report, which provides support to the appellant’s account of past events and his claim to be at risk on return. There is then the brief report from Prof Ahmed (174-175 of the bundle). This has not been challenged in any way. I am satisfied that the author is suitably qualified to provide expert opinion on the authenticity and reliability of the relevant documents that he has been provided with. I accept that the author caused enquiries to be made by colleagues, and that these enquiries reliably established the provenance and accuracy of the death and birth certificates of the various family members listed in the report and contained elsewhere in the bundle. In turn, these documents provide solid corroboration of the appellant’s claim that his father and three of his brothers died and that his nephew was the subject of prosecution by the authorities and that this was publicised on social media.

27. Although Dr Messahel and Dr Abosaif were unable to attend the hearing and were therefore not tested in cross-examination. I nonetheless give at least some weight to their witness statements, the contents of which have not been expressly challenged by the respondent. Both attest to the involvement of the appellant in certain political activities in the United

Kingdom. I accept that this evidence provides some corroboration of the appellant's own account on this issue.

28. I find that the appellant's brother, Mahmoud Saber, does reside in Turkey and that his evidence is supportive of the appellant's on the issue of the family connections to the MB and the problems that this has caused. I accept that this brother has been vocal in his criticism of the Egyptian authorities, as evidenced not only in his statement but the media articles contained in the bundle. The country information indicates that the regime monitors the Internet and social media. It is reasonably likely that the brother's activities will be known about.

29. I agree with Ms Bayoumi's description of Prof Elmoghazy as an "impressive" witness. I found his oral evidence to be candid, straightforward, and indicative of an individual who treated his appearance as a witness with all due seriousness. I have no reason to doubt his explanation that he has been asked to appear as a witness on many occasions, but has been very selective when accepting. He told me that it was a policy of the MB, and his own personal position, that he would need to be "100%" that a person was connected to the organisation before he would agree to give evidence on their behalf. I accept that to be the case.

30. I find that Prof Elmoghazy has held senior roles in the Freedom and Justice Party, as well as being an active member on behalf of the MB. I accept that he was recognised as a refugee in this country and was granted naturalisation as a British citizen in September of this year. It is quite clear to me that he attended the hearing not as a friend of the appellant, but as someone who could speak to his political beliefs and activities in this country, as well as the profile of his family within Egypt. As to the former, I accept his evidence that he has met the appellant on a number of occasions at events held in Birmingham and London and that these events were manifestly in opposition to the Egyptian regime.

31. Perhaps more importantly, he provided compelling evidence as to how he had satisfied himself that the appellant is who he says he is, as it were, and that the family profile in Egypt is as claimed. He explained that he had made enquiries with the MB internal structures, who had put him in touch with two individuals, one living in Turkey and the other in Qatar, who had held senior positions in the appellant's local area in Egypt (they were described as being on the executive committee of the MB in this district). As to the place of residence of these two individuals, it is of note that the CPIN indicates that many members of the MB fled Turkey to live in Turkey and Qatar. I accept that the witness made contact with these two named individuals and that they were able to confirm that the appellant and his family were supporters and, in the case of most of the siblings, members, of the MB, and that the entire family was well-known. He described some of the appellant siblings as being "very active", and that the brother now living Turkey was a "high rank" member. The witness explained that the two individuals he had spoken to had left Egypt in 2014, but had

maintained contacts in the relevant district in Egypt. They were able to communicate from Turkey and Qatar with colleagues in Turkey using, for example, WhatsApp, a social media platform that, I note, has end-to-end encryption, thus making it a relatively secure method.

32. Prof Elmoghazy's provides powerful support for the central underlying plank of the appellant's claim, namely that he comes from a family which has been, and is to an extent still, active on behalf of the MB and that this is known to the Egyptian authorities.

33. Mr Aly's evidence was less significant in content, but it nonetheless provided some support to the appellant's claimed activities in the United Kingdom.

34. I have of course considered the specific points raised in the reasons for refusal letter. Some of these I have already addressed. In respect of others, including the issue of the appellant seeking work (paragraph 30-31) and specifics concerning targeting by the Egyptian authorities (paragraph 48-63), the evidence as it now stands and taken in the round significantly undermines any force that these potentially adverse matters may have held. In short, nothing in the account is so contradictory or implausible as to materially damage the appellant's overall credibility.

35. In light of the above, I make the following findings of fact:

i. the appellant comes from a family of committed active supporters and/or members of the MB;

ii. the appellant himself is a genuine supporter of the MB, is committed to its principles, and is opposed to the current regime;

iii. the appellant's profile and that of his family as a whole is known by the Egyptian authorities;

iv. three of the appellant's brothers and a nephew were detained by the Egyptian authorities, as claimed. The three brothers died as result of their detentions;

v. the appellant was detained in 2017 on suspicion of being an active supporter of the MB, as claimed. He was tortured and then released without charge;

vi. he was able to leave the country on his own passport, but this was not an indication of a lack of interest on the part of the Egyptian authorities;

vii. the appellant has attended a number of anti-regime events in the United Kingdom;

viii. the appellant's brother in Turkey has an anti-regime media profile and this is known to the authorities;

ix. if returned to Egypt, the appellant would wish to express his political views, but would not do so in order to avoid the risk of being detained and ill-treated once again.

Conclusions

36. I now apply the factual matrix set out above to the issue of risk on return.

37. For the reasons set out below, I conclude that the appellant would clearly be at risk of further detention and persecutory treatment and serious harm if returned to Egypt.

38. First, applying paragraph 339K of the Immigration Rules, the appellant's past persecution is indicative of future risk.

39. Second, the respondent's own assessment of the country evidence, as set out in section 2 of the CPIN, is strongly indicative of an acceptance on her part that, in light of the facts I have found, the appellant would indeed be at risk:

> "2.4.2. . Political parties face arbitrary restrictions on their work. Political activists have also been targeted and arrested during large scale protests, such as in September 2019, some of whom have faced prosecution on national security charges. Activists and those criticising the government also face prison terms, death sentences, extrajudicial violence, enforced disappearences and other forms of pressure. The US State Department reported that at the end of 2019 there may have been between 20,000 to 60,000 political prisoners - persons detained because of their political belief - although the government denies this.
>
> …
>
> 2.4.8. a person who is or is perceived to be openly critical of the government may face a risk of treatment that amounts to persecution. Whether they face a risk of persecution will depend on factors such as the group, their profile and activities, and whether they are likely to be known by the government and are considered a threat to its control. Factors to consider in establishing if a person is at risk include:
>
> - the organisation to which the person belongs, its legal status and activities;
> - the person's role, profile and actions
> - whether the person has come to the attention of the authorities previously, in what context, why and what was the outcome
> - the profile and activities of family members who are perceived to be critical to the government

40. Here, the appellant has an adverse history of association with a proscribed terrorist organisation (under Egyptian law), the MB; he has been detained and tortured as a result; and his family as a whole have a particularly adverse profile, including current criticism by the brother in Turkey.

41. Turning to the country evidence itself, the CPIN makes reference to multiple sources, all pointing in the same direction: no form of meaningful political dissent is tolerated, and those who express anti-regime views and/or are known or suspected to have connections with the MB will face very serious problems indeed:

> "3.1.7 . The authorities have maintained a constant crackdown against dissent, which initially was aimed at the Muslim Brotherhood but has evolved to encompass a broader range of political speech, encompassing anyone criticizing the government.
>
> …
>
> 4.2.3. DFAT assessed '… that the ability of Egyptian citizens to protest peacefully against the government or express dissent is severely restricted, and is continuing to narrow. Those who come to the attention of authorities for attempting to protest are highly likely to face arrest and prosecution on national security charges.
>
> …
>
> 4.2.5. Freedom House in its report covering events in 2019 observed 'meaningful political opposition is virtually nonexistent, as expressions of dissent can draw criminal prosecution and imprisonment.' The source also noted: '… in practice there are no political parties that offer meaningful opposition to the incumbent leadership…. Activists, parties, and political movements that criticize the government continued to face arrests, harsh prison terms, death sentences, extrajudicial violence, and other forms of pressure during 2019. Following a series of small protests in September 2019, the regime carried out thousands of arrests, targeting not only protesters but also political activists and politicians, among others.
>
> …
>
> 4.2.7. Amnesty International (AI) in its report covering events in 2019 noted the government's reactions to protests during the year: 'The authorities resorted to a range of repressive measures against protesters and perceived dissidents, including enforced disappearance, mass arrests, torture and other ill-treatment, excessive use of force and severe probation measures, particularly after protests against the President on 20 September…
>
> …
>
> 4.4.2. HRW in its report on events in 2019 noted: 'The police and National Security Agency routinely carry out systematic enforced disappearances and torture with impunity. Torture practices have also affected well-known activists such as Alaa Abdel Fattah and Israa Abdel Fattah. Authorities keep thousands of prisoners in abysmal conditions, where overcrowding and insufficient medical care have been systematic and may have contributed to the deteriorating health and deaths of scores of detainees.
>
> …

4.4.2 (the numbering repeats itself). The USSD report for 2019 noted: 'According to domestic and international human rights organizations, police and prison guards resorted to torture to extract information from detainees, including minors. Reported techniques included beatings with fists, whips, rifle butts, and other objects; prolonged suspension by the limbs from a ceiling or door; electric shocks; sexual assault; and attacks by dogs. On March 12, Human Rights Watch (HRW) stated that torture was a systematic practice in the country."

42. It is highly likely that on return the appellant's history will come to light either at the point of return or where ever he might seek to reside. Bearing in mind that the appellant cannot be expected to lie in response to any questions put to him by the authorities, on the basis of his particular profile and the country information, there is a high chance of him being detained and tortured. On this basis alone, the appellant is a refugee and a person whose removal would expose him to treatment contrary to Article 3.

43. In addition, it is abundantly clear that if the appellant were to return to Egypt and express his anti-regime views in accordance with his genuinely held beliefs, he would be at risk of detention and persecutory treatment and serious harm. In order to avoid this risk, of which he is fully aware, he would be compelled to suppress the expression of his genuinely held beliefs. Therefore, he succeeds on the HJ (Iran)/RT (Zimbabwe) basis as well.

44. It is unnecessary for me to determine whether the appellant would be at risk simply as a failed asylum-applicant.

Anonymity

45. I maintain the anonymity direction made by the First-Tier Tribunal.

Notice of Decision

46. The making of the decision of the First-tier Tribunal did involve the making of an error of law and it has been set aside.

47. I remake the decision by allowing the appeal.

Signed: H Norton-Taylor Date: 15 October 2020

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed: H Norton-Taylor Date: 15 October 2020

Upper Tribunal Judge Norton-Taylor

APPENDIX: ERROR OF LAW COMPONENT OF MY DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10551/2018

THE IMMIGRATION ACTS

Heard at Field House
On 9 March 2020

Decision & Reasons Promulgated

…………………………………

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

K S M M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:
For the Appellant: Mr D James, Counsel, instructed by Ferial Solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

Introduction

1. This is the appeal of the Appellant against the decision of First-tier Tribunal Judge Fox (“the judge”), promulgated on 9 December 2019, by which he dismissed the Appellant’s appeal against the Respondent’s refusal of his protection and human rights claims. Those claims were made on 12 February 2018 and the refusal is dated 20 August 2018.

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2. In essence, the Appellant's case has always been predicated on his claimed involvement with the Muslim Brotherhood in Egypt and that of family members. It is said that this has caused him to have suffered harm in the past and this, combined with activities he has undertaken in the United Kingdom together with those of his brother in Turkey, will present a real risk of persecution and treatment contrary to Article 3 ECHR upon return to Egypt.

3. In refusing the claims, the Respondent did not accept that the Appellant had ever been involved with the Muslim Brotherhood, nor was it was accepted that he had been the subject of adverse attention by the Egyptian authorities. The Appellant's initial appeal to the First-tier Tribunal was dismissed by First-tier Tribunal Judge Bristow in a decision promulgated on 7 May 2019. This was successfully challenged in the Upper Tribunal. By a decision promulgated on 5 September 2019, Upper Tribunal Judge Kamara concluded that Judge Bristow had materially erred in law, that his decision had to be set aside, and that the appeal would be remitted to the First-tier Tribunal for a complete rehearing.

<u>The decision of the First-tier Tribunal</u>

4. Having set out the evidence and submissions of the parties in some detail, the judge's findings begin at [73]. He notes the existence of an expert report from Dr Fatah and that the conclusions reached in that report had been dependent upon the account provided by the Appellant. At [76] to [79] the judge notes the absence of what is described as "reliable" medical evidence relating to claimed past ill-treatment of the Appellant. The judge was of the view that a medical report could reasonably have been obtained in the United Kingdom and/or that medical records from Egypt could have been obtained.

5. At [81] and [82] the judge notes the Appellant's failure to have provided certain information in his screening interview. At [83] to [84] the judge commented on the absence of any evidence from an individual, described as a "friend", to whom the Appellant had made reference in his oral evidence.

6. [85]–[91] relate to the Appellant's evidence concerning his wife and her circumstances in Egypt. The judge was of the view that it was "reasonable to expect" (a phrase used repeatedly throughout the decision) that the Appellant could have provided further information about this issue. The claimed *sur place* activities dealt with the single paragraph ([100]). The judge stated that it was:

> "… an usual feature of the available evidence that the appellant should claim to believe that the authorities are aware of his sur place activities whilst making simultaneous claims that the authorities had pursued his wife for information about his whereabouts."

7. In addressing the evidence concerning the Appellant's brother in Turkey, the judge concluded that the Appellant had not "[availed] himself of the opportunity to provide corroborative evidence available with relative ease to demonstrate the brother's alleged public profile in Turkey." Three letters of support from individuals claiming to have knowledge of the Appellant's family's circumstances in Egypt are dealt with at [103], this evidence was deemed to be "vague". The evidence of two live witnesses at the hearing dealt at [96]–[97] and [109]. Shortcomings in their evidence is referred to and it would appear as though little weight was attached to it. The Appellant had claimed that two nephews had been killed as a result of their association with the Muslim Brotherhood. The judge deals with this issue in [110], stating that the documentary evidence (that being death certificates for the two individuals concerned) was of limited probative value because the Appellant had obtained false information for use in his own entry clearance application. Therefore, on the judge's reasoning, the death certificates were deemed to be unreliable. In light of judge's analysis, he concluded that the "core of the claim is fatally flawed." There was said to be no risk on return, the protection and human rights claims were duly rejected, and the appeal dismissed.

<u>The grounds of appeal and grant of permission</u>

8. The grounds of appeal essentially make the following points. It is said that:

   i. the judge failed to consider material evidence adequately or at all;

   ii. the judge failed to make findings on material matters;

   iii. the cumulative effect of these omissions was to render the decision as a whole unsound.

9. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 17 January 2020.

<u>The hearing</u>

10. At the hearing Mr James relied on the grounds and expanded on these. He helpfully provided me with references to the various sources of evidence upon which the judge was basing his conclusions at various points in his decision. The general thrust of Mr James' submissions was that the judge had failed to consider certain aspects of the evidence, had failed to make findings of fact, had failed to give adequate reasons in certain respects, and had not sufficiently dealt with the issue of prospective risk on return.

11. Mr Kandola submitted that when the judge's decision was read as a whole the conclusions reached were all sustainable. The references to what the judge deemed it "reasonable to expect" from the Appellant was permissible with reference to <u>TK (Burundi)</u> [2009] EWCA Civ 40. The judge was not requiring corroborative evidence of the Appellant.

Error of law component of the decision in this appeal

12. As I announced to the parties at the hearing, I conclude that the judge has materially erred in law when the decision is viewed holistically, and the grounds of appeal are considered on a cumulative basis. In no particular order I conclude that the errors committed are as follows.

13. In respect of the *sur place* aspect of the claim, this was clearly an issue relied on by the Appellant at the appeal. It is dealt with in a single paragraph by the judge, which has been quoted in full, above. In my judgment, what is said here is inadequate. On one reading it may be said that the judge was rejecting any and all claimed *sur place* activities on the basis that this aspect of the evidence was in conflict with what the Appellant had said about the authorities asking after his whereabouts in Egypt. Another reading might be that he was only rejecting the evidence relating to the authorities' enquiries because it conflicted with the *sur place* activities. It is possible that *all* of this evidence was being rejected. However, as I read the papers it does not appear as though the fact of *sur place* activities had been disputed by the Respondent. There are no findings by the judge as to what, if anything, the Appellant had in fact been doing whilst in the United Kingdom. There was evidence of such activities and in all the circumstances it was incumbent upon him to make clear findings on the issue.

14. This first error is material because there was country information and expert evidence before the judge to indicate that the Egyptian authorities do monitor activities carried on abroad and that *sur place* activities were capable of presenting a risk to an individual in certain circumstances. Therefore, the judge's error could have had a material effect on the outcome of the appeal.

15. The second error concerns the three "other letters" referred to by the judge at [103]. On a cumulative basis these three letters do state in terms that the authors were aware of problems faced by the Appellant's family in Egypt. It is right that they were not particularly detailed, but it cannot properly be said that they were so vague as to be of no possible probative value whatsoever. In addition, the judge's reason that little if any weight should be placed upon them because the Appellant's credibility had been "damaged" indicates that they have not been considered in the round: in other words that the Appellant's credibility had not been assessed with reference to what the authors said, and *vice versa*. These letters were capable of bearing relevance as to the Appellant's overall account of adverse interest by the Egyptian authorities.

16. I turn now to the medical evidence. It is right that there was no medico-legal report obtained in the United Kingdom. It is also the case that the Appellant had not obtained medical records from Egypt (if they indeed existed). On the assumption that the judge was not actually requiring corroborative evidence of the Appellant, he may have been entitled to form an adverse view of the absence of medical evidence. However, the

judge was obliged to engage with the evidence that was before him. This included not only the Appellant's own evidence, but GP patient records contained in the bundle which at least made reference to previous torture and injuries sustained as a result thereof. Whilst [76] of the judge's decision contains a reference to page 238 of the Appellant's bundle, there is no engagement with the potentially supportive value of this evidence.

17. The question of the brother's claimed activities in Turkey is inadequately dealt with in [102]. The brother himself had not provided a witness statement. However, there was evidence of social media activity contained in the Appellant's bundle and the live witnesses had provided evidence supporting these claimed activities. The judge has failed to made findings of fact as to whether the brother was the author of the various posts, the content of these posts, and what potentially adverse view might be taken of them by the Egyptian authorities. Further, there is an absence of analysis as to whether any adverse view taken of this information would have had an impact on the Appellant himself. Therefore, even though the judge at [106] has purported to make an alternative finding on the basis that the brother was politically active in Turkey, there is no adequate consideration of the prospective risk on return to the Appellant as a result (as opposed to a statement of whether there had in fact already been any adverse consequences for the Appellant's family in Egypt). This error is material because Dr Fattah's report, together with the country information, indicated that activities abroad may be the subject of monitoring by the Egyptian authorities and that this could create a risk factor for a returnee.

18. In respect of the screening interview, it is the case that the Appellant did not state in terms that he had been associated with the Muslim Brotherhood. It is, however, also the case that he had confirmed that he had been detained because he was "against government policies". The date of the detention and the claimed duration is consistent with evidence provided thereafter. The Appellant provided an explanation in his witness statement for the omissions in the screening interview, and it was incumbent upon the judge to address these explanations and to consider the omissions in the interview with what was in fact stated therein, bearing in mind that screening interviews are always considered to be relatively brief in nature.

19. Finally, I return to the repeated references to the phrase "reasonable to expect" contained in a number of paragraphs. Some of these references do relate to the absence of evidence that it may properly be said could, on the face of it, have been relatively easy for the Appellant to have obtained (for example, a medico-legal report in the United Kingdom). However, other references refer to the actions or views of the Egyptian authorities or the Appellant's wife. Whether a particular matter is "reasonable" to be expected from the viewpoint of a decision-maker in the United Kingdom is a matter that should be treated with real caution when assessing a protection claim on the lower standard of proof. There is a distinct danger

that either a higher standard is being applied, or that an artificial test of "reasonableness" is in play.

20. On a cumulative basis, the credibility assessment and that of risk of return are flawed and the judge's decision must be set aside.

Disposal

21. Both representatives were agreed that if the judge's decision were to be set aside, this appeal should be retained in the Upper Tribunal and set down for a resumed hearing in due course. I agree with that course of action. Although the remaking decision would involve extensive fact-finding, this can quite properly be done at a resumed hearing.

22. The remaking component of the decision in this appeal shall not involve any preserved findings of fact.

23. To progress this matter, I have set out directions to the parties, below.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law and I set it aside.

This appeal is adjourned for a resumed hearing in the Upper Tribunal in due course.

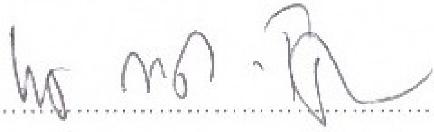
I maintain the anonymity direction.

Directions to the Parties

(1) No later than 4pm 27 March 2020, the Secretary of State shall file and serve written submissions on the issue of exclusion from the Refugee Convention on the basis of the Appellant's case taken at its highest.

(2) No later than 4pm on 17 April 2020 the Appellant shall file and serve a consolidated bundle of all evidence relied on (including updated witness statements from the Appellant and his two witnesses, such that they are capable of standing as examination-in-chief).

(3) No later than 10 days prior to the resume hearing the Appellant shall file and serve a skeleton argument.

Signed  Date: 13 March 2020

Upper Tribunal Judge Norton-Taylor