Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00162/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 July 2021	**On 17 September 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

MAH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D. Sellwood, Counsel instructed by Brighton Housing Trust
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

DIRECTION REGARDING ANONYMITY
Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we 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.

INTRODUCTION

1. The Appellant is an Egyptian national, born on 1 February 1986. On 25 October 2016 the Appellant entered the United Kingdom and claimed asylum on arrival. The Appellant's international protection claim was refused by the Secretary of State on 10 December 2018.

PROCEDURAL HISTORY

2. The Appellant exercised his right of appeal against that decision by virtue of the provisions in section 82 of NIAA 2002 and the subsequent appeal was heard by the First-tier Tribunal on 6 February 2019. The appeal was dismissed by First-tier Judge Cas O'Garro on 14 February 2019. The Appellant appealed against that decision and was eventually granted permission by the Upper Tribunal on 29 May 2019. On 16 July 2019 Deputy Upper Tribunal Judge Eshun found error of law in that decision and the appeal was remitted to the First-tier Tribunal for full rehearing.

3. The First-tier Tribunal heard the remitted appeal on the 21 November 2019 and the appeal was again dismissed by First-tier Tribunal Judge Pears in a decision promulgated on 26 November 2019. The Appellant subsequently challenged that decision to the Upper Tribunal and permission to appeal was granted by the Upper Tribunal itself on 26 February 2020.

4. On 29 July 2020, Upper Tribunal Judge Gill considered the grounds of appeal lodged by the Appellant and made a decision under rule 34 of the Upper Tribunal Procedure Rules without a hearing. Upper Tribunal Judge Gill concluded that the Appellant's challenges to the decision of the First-tier Tribunal had been made out and, at para. 29 of her decision, Judge Gill set aside the First-tier Judge's decision in its entirety.

5. The appeal then came before Upper Tribunal Judge Smith on 14 January 2021. The issue before Judge Smith was whether, in light of the High Court's decision in The Joint Council for the Welfare of Immigrants v The President of the Upper Tribunal (Immigration And Asylum Chamber) And The Lord Chancellor [2020] EWHC 3103 (Admin), either party objected to the use of rule 34 by Upper Tribunal Judge Gill in disposing of the error of law issues without a hearing.

6. At para. 4 of Upper Tribunal Judge Smith's decision it is recorded that neither side objected, however Mr Sellwood, Counsel on behalf of the Appellant, made the submission that the positive credibility findings

made by Judge Pears should in fact have been preserved rather than all of the relevant credibility findings being set aside. For reasons which are unclear from the judgment Mr Walker, Senior Presenting Officer on behalf of the Secretary of State, confirmed that he took no objection to the findings at paragraphs 44 and 45 of Judge Pears' decision being maintained. As a consequence Upper Tribunal Judge Smith formally recorded that those paragraphs should be preserved for the next substantive hearing. It is also recorded at para. 8 of the UT decision that Mr Walker had no objection to the Appellant seeking to admit an unreported decision of the Upper Tribunal in AE v The Secretary of State for the Home Department, (Tribunal ref: PA/13406/2017).

THE LEGAL FRAMEWORK

7. The Appellant's right of appeal and the Tribunal's main powers to determine the appeal are detailed in Part V of the 2002 Nationality and Immigration Act ("NIAA 2002").

8. The Appellant claims that the Secretary of State's decision would be a breach of the United Kingdom's obligations under the 1951 Geneva Convention relating to the status of refugees and the 1967 Protocol thereto (the Refugee Convention). The Appellant therefore claims to be a refugee within the definition in The Refugee or Person in Need of International Protection (Qualification) Regulations 2006.

9. In the alternative the Appellant is to be taken to claim Humanitarian Protection pursuant to paragraph 339C of the Immigration Rules (by which has been implemented EU Council Directive 2004/83/EC). In addition, the Appellant says that his removal from the United Kingdom would be a breach of the United Kingdom's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms – now incorporated into English Law by the provisions of the Human Rights Act 1998.

10. A refugee is defined by Regulation 2 of the 2006 Qualification Regulations by reference to Article 1A of the Refugee Convention, and thus as someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it. The burden is on the Appellant to show in an asylum appeal that their return will expose them to a real risk of an act of persecution for a Refugee Convention reason.

11. A grant of Humanitarian Protection is only to be made pursuant to paragraph 339C of the Immigration Rules. The Rules require that the

relevant person must not qualify as a refugee, and, must not be a person who is excluded by virtue of paragraph 339D. An Appellant must show substantial grounds for believing that if returned to their country of return, they would face a real risk of suffering serious harm and that they are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country. Serious harm is also defined in paragraph 339C.

12. In relation to an asylum appeal, a Humanitarian Protection appeal, and a Human Rights appeal we are obliged to look at the case in the round, and to Judge the situation at the time of hearing the appeal, applying paragraph 339J-P of the Immigration Rules.

THE SUBSTANTIVE APPEAL HEARING

13. The hearing of the substantive protection appeal was carried out at Field House with all of the relevant parties appearing in person. During the course of the hearing the Tribunal attempted to allow all of those who had attended to be present in the hearing room, however in light of current social distancing regulations we were unfortunately unable to accommodate everyone at the same time. We confirmed with Mr Sellwood, Counsel for the Appellant, if he was content to proceed without the Appellant's personal adviser from West Sussex County Council, Tracey Beard, being present during the hearing and he confirmed that there was no objection to that course of action. We should also recall for completeness that attempts were made by Tribunal staff to deploy the use of remote hearing technology to try to assist Ms Beard and Mr Sellwood's pupil in observing the hearing remotely, but this unfortunately was not possible.

14. In respect of the relevant paperwork we have had full regard to the Home Office bundle consisting of sections running from A to J. We have also had regard to the skeleton argument provided by Mr Sellwood dated 11 February 2021, as well as the Appellant's appeal bundle running to 208 pages. We have also had sight of the letter dated 6 July 2021 from Tracey Beard, as well as the document from the Tahrir Institute for Middle East Policy, Egypt's Security Watch, (ESW), week in brief: September 7 - 13, 2019 dated 13 September 2019.

15. It became clear at the beginning of the hearing that Mr Tufan (Senior Presenting Officer) had not seen the Appellant's September 2020 witness statement - this was given to him by the Tribunal and, having had time to read this document, Mr Tufan confirmed that he had had enough time to prepare and was happy to proceed.

16. Although the Appellant was plainly reasonably fluent in English he nonetheless gave his evidence using the Tribunal's interpreter in Arabic (North African dialect). There was no indication during the

hearing from either the Appellant, the interpreter or Mr Sellwood that there were any difficulties with understanding.

17. The Appellant was cross examined by Mr Tufan and we also heard oral submissions from both parties. We have made a full note of the questions, answers and competing arguments in the record of proceedings.

18. At the end of the hearing we formally reserved our judgment which we now give with full reasons.

THE APPELLANT'S CORE CLAIM

19. The Appellant's core claim is that laid out in his SEF statements dated 28 February 2017 and 21 September 2017 (the following summary is drawn from the witness statement dated 28 February 2017 unless otherwise stated). In those statements the Appellant claims that his father was put in prison in January 2013 (corrected to 2014, witness statement at para. 3, (21 September 2017)) having been accused of being one of the Muslim Brotherhood and at the date of that statement, his father was being held in a prison in a town called Wadi Al Natroun. The Appellant was not present during his father's arrest, that occurred in the family's other house in their home village; the Appellant was informed of his father's arrest by his father's cousin Yehia Haraz. The Appellant did however claim that he had been present when the government had come to one of the family homes in respect of the "Muslim Brotherhood issue".

20. The Appellant claimed that his father had been tried in Khafre Al Sheikh. The Appellant was again not present but states at para. 18 that his uncles and other family members went to the trial. It is also said that the Appellant's father had a lawyer and that the trial resulted in the Appellant's father being sentenced to 6 years imprisonment.

21. At para. 19, the Appellant clarifies that he did not know if his father was in fact involved with the Muslim Brotherhood but it was his belief that the government interest in his father was because of alleged involvement with the Muslim Brotherhood.

22. The Appellant claims to have left Egypt on 1 August 2015, travelling by boat to Italy where he stayed (in Rome) for one year and three months. He states that he did not claim asylum in Italy but nonetheless studied there and learned some of the Italian language and was given government money. The Appellant goes on to say at para. 36, that he left Italy because life was difficult there and travelled by train to France. From France the Appellant was assisted by people who he knew from Egypt to travel to Belgium and was later brought to the United Kingdom hidden in a lorry on 25 October 2016.

23. Since being in the UK, the Appellant claims that he has been informed by his mother and maternal cousin (Saad Abdrabbo) that the Appellant's paternal cousin, Gamal Haraz, and his brother-in-law, Mohammed Abdrabbo, have also been arrested by authorities. The Appellant claims that both men had been in hiding in Egypt for some time after his father was arrested but that they were eventually detained at the beginning of February 2017. He goes on to say that because they were religious men, they were then accused of being supporters of the Muslim Brotherhood. The Appellant later explained that he had been told that these two men had been held in the village police station (Al Gazira Al Khadra), investigated for their possible involvement with the Muslim Brotherhood and then released a few weeks to a month later with no charges being brought against either of them (witness statement at para. 4, (21 September 2017)).

24. At para. 23, the Appellant alleges that the Egyptian authorities have been to the Appellant's family home looking for him. The Appellant claims to know this on the basis of receiving information from his maternal cousin and his mother. The Appellant confirms at para. 32 that he is in contact with his mother "every now and again" amounting to "about every 10 days" (witness statement at para. 5, (21 September 2017).

25. In the witness statement dated 31 January 2019, the Appellant asserts that the authorities had stopped searching for him at the family home when they found out that he had left the country (see para. 16). In the same paragraph the Appellant says that when the authorities went to his house on that occasion they ransacked the property and as a result the Appellant's family reported this incident to a government human rights organisation in Khafre Al Sheikh. The Appellant says that this organisation came and looked at the house but took no further action.

26. By the time of this witness statement the Appellant's father had died (according to the documentation on 26 April 2018 from a cerebral haemorrhage). It is important to note that at paragraph 19 of this witness statement the Appellant explains that he gave the document showing that his father was in Wadi Al Natroun prison (dated 20 January 2016) to the Home Office at the full Asylum Interview ("AI"). In this paragraph he clarifies that the document is a photograph of a certified copy of the original document and was sent to the Appellant by his maternal cousin Saad via Facebook and that this copy was obtained by the Appellant's father's lawyer. At para. 20, the Appellant also clarifies that the documents relating to the Appellant's father's death were also sent by Saad via Facebook. At page 16A of the Appellant's bundle there is a statement from Olivia Cavanagh, legal representative at BHT dated 5 February 2019, in which she records that she received the Egyptian documents "dated 26 April 2018" by email from the Appellant's support worker at the time.

27. The Appellant also mentions, at para. 28, that his paternal cousin Gamal Haraz is now in the UAE because of his problems in Egypt; the Appellant also claims that his brother-in-law Mohammed Abdrabbo is now in Libya working as a fisherman.

28. In the final statement dated 3 September 2020, the Appellant states at para. 12 that he had contacted his mother and asked her to give him the details of his father's lawyer. The Appellant goes on to say "*she said that she has tried to contact him but it has not been possible as she lost contact with him when my father died. My mum is not a very educated woman, she left school when she was young and doing these kinds of things is difficult for her*" (sic).

THE ASSESSMENT OF CREDIBILITY - THE LAW

29. In assessing the Appellant's credibility then, we have taken into account that the standard of proof is the lower standard, and as per Karanakaran v Secretary of State for the Home Department [2000] 3 All ER 449 and Ravichandran [1996] Imm AR 97 we must take into account all of the material issues in the round.

30. The burden is upon the Appellant to establish the core elements of the protection claim. A failure to do so will mean that the person in question has failed to make out their claim in those key respects, as per MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 at [48] and HH (Afghanistan) v Secretary of State for the Home Department [2014] EWCA Civ 569 at [9].

31. We have also been guided in that assessment by the terms of Article 4 of EU Council Directive (2004/83/EC) as well as the transposition of this Article into the Immigration Rules at 339L.

32. We have borne in mind that genuine protection claimants might exaggerate or fabricate evidence in their claim in order to reduce the risk of the appeal being wrongly dismissed as per SB (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 160 ("SB") at [43].

33. In the same judgment the Court laid out the approach to the assessment of credibility at [46]:

> "In cases (such as the present) where the credibility of the Appellant is in issue courts adopt a variety of different evaluative techniques to assess the evidence. The court will for instance consider: (i) the consistency (or otherwise) of accounts given to investigators at different points in time; (ii) the consistency (or otherwise) of an Appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) whether, on facts found or agreed or which are incontrovertible, the Appellant is a person who can be categorised as at risk if returned, and, if so, as to the nature and extent of that risk (taking account of applicable Country Guidance); (iv) the

> adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the Appellant should be able to adduce in order to support his or her case; and (v), the overall plausibility of an Appellant's account."

34. We have also taken into account the Court of Appeal's view of the applicability of the 'Lucas Direction[1]' to the IAC in Uddin v The Secretary of State for the Home Department [2020] EWCA Civ 338 at [11]:

> "… A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure. That is because a person's motives may be different as respects different questions. The warning is not to be found in the judgments before this court. This is perhaps a useful opportunity to emphasise that the utility of the self-direction is of general application and not limited to family and criminal cases."

35. We have additionally reminded ourselves of the Court's recent clarification that the terms: *credibility* and *plausibility* are not terms of art and do not have "*special technical meaning*", see MN v The Secretary of State for the Home Department (Rev 3) [2020] EWCA Civ 1746 ("MN") at [127].

36. We have also been careful to heed the Tribunal's warning in TK (Tamils – LP updated) Sri Lanka CG [2009] UIT 00049 to avoid treating country evidence as automatically 'objective' and have therefore scrutinised the relevant background evidence provided with appropriate care:

> "7. The emphasis we place on assessment based on objective merit prompts us to make one further comment. It is still widespread practice for practitioners and Judges to refer to "objective country evidence" when all they mean is background country evidence. In our view, to refer to such evidence as "objective" obscures the need for the decision-maker to subject such evidence to scrutiny to see if it conforms to the COI standards just noted. This practice appears to have had its origin in a distinction between evidence relating to an individual applicant (so-called "subjective evidence") and evidence about country conditions (so-called "objective evidence"), but as our subsequent deliberations on the Appellant's case illustrate (see below paras 153-9), even this distinction can cause confusion when there is an issue about whether an Appellant's subjective fears have an objective foundation. We hope the above practice will cease."

THE APPELLANT'S CREDIBILITY – FINDINGS AND REASONS

Our starting point – the preserved findings

[1] CACD in *R v Lucas* [1981] QB 720

37. Our starting point for the assessment of the Appellant's claim to international protection must start, as directed previously by Upper Tribunal Judge Smith, with the preserved findings of First-tier Tribunal Judge Pears at paragraphs 44 and 45:

> "44. I make the following observations. The crackdown on the Muslim Brotherhood seems to be in the period of 2013 and onwards. The Appellant says his father was arrested in either 2013 or 2014 and whichever date is correct that is consistent with such a crackdown.
>
> 45. I accept that on the lower standard of proof and based on the background evidence, the board claimed by the Appellant that his father was arrested and the documentary evidence that suggested he had been arrested fact that that indeed happened and I accept that he has since died." (sic)

38. A further effect of this finding is that the documentary evidence provided by the Appellant is taken to be reliable. We have obviously considered this important aspect when assessing the Appellant's credibility overall in line with the Tribunal's guidance in QC (verification of documents; Mibanga duty) [2021] UKUT 33 (IAC):

> "**Verification of documents**
>
> (1) The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an Appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any "live" issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises. If the respondent does not fulfil the obligation, the respondent cannot challenge the authenticity of the document in the proceedings; but that does not necessarily mean the respondent cannot question the reliability of what the document says. In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to, the rest of the evidence.
>
> **The Mibanga duty**
>
> (2) Credibility is not necessarily an essential component of a successful claim to be in need of international protection. Where credibility has a role to play, its relevance to the overall outcome will vary, depending on the nature of the case. What that relevance is to a particular claim needs to be established with some care by the judicial fact-finder. It is only once this is done that the practical application of the "Mibanga duty" to consider credibility "in the round" can be understood (Francois Mibanga v

> Secretary of State for the Home Department [2005] EWCA Civ 367). The significance of a piece of evidence that emanates from a third party source may well depend upon what is at stake in terms of the individual's credibility.
>
> (3) What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome."

The Appellant's minority

39. Throughout our assessment of the Appellant's credibility we have also kept at the forefront of our minds that the Appellant was only 14 years old at the time that his father was sent to prison in Egypt and that he left Egypt when he was 15. We therefore fully accept the overall submission that we should approach the Appellant's evidence in respect of his recollection of events with proper caution bearing in mind his minority at the relevant times.

40. We have also weighed into our overall assessment the reports of Alison Pargeter (dated 14 September 2020) and Mr Walter Armbrust (dated 31 January 2019 and 27 September 2017) which we now set out in summary form.

The report of Ms Pargeter (14 September 2020)

41. Ms Pargeter describes herself as an analyst and consultant specialising in political and security issues in North Africa and the Middle East, as well as in political Islam and radicalisation. She goes on to state that she is a senior research associate at the Royal United Services Institute (RUSI) where she recently completed a research project on the Muslim Brotherhood: Beyond the Arab Spring, which focused on the movement in Egypt and Libya as well as its affiliate in Tunisia. This project entailed Ms Pargeter conducting fieldwork in Egypt on numerous occasions (page 1 of the report).

42. The report provides a useful summary of the events leading up to the hostility towards President Mohammed Morsi and the Muslim Brotherhood which by June 2013 led to millions of people taking to the streets to demand his resignation. It details that on 3 July 2013 the Egyptian military deployed troops and armoured vehicles and overthrew Morsi - and as a consequence of this coup, the military

performed a heavy clampdown on the Muslim Brotherhood. At para. 2.11, page 4 of the report, Miss Pargeter details the large number of fatalities and injuries caused by the military breaking up a protest camp at Rabbaa Al-Adawiya on 14 August 2013. It is said that Human Rights Watch called this massive use of lethal force as "*the most serious incident of mass unlawful killings in modern Egyptian history*."

43. Since then, it is said at para. 2.12, the military backed regime under Al-Sisi (who became President in June 2014) has continued its campaign against the Brotherhood, arresting members, supporters and sympathisers alike. Ms Pargeter refers to an Amnesty International report entitled 'roadmap to repression: no end in sight to human rights violations', which indicates that thousands of perceived pro-Morsi supporters and sympathisers have been rounded up. At para. 2.13, she also refers to an Human Rights Watch article from 2019 which indicates that the Egyptian security forces had arrested or charged at least 60,000 people on political grounds, although this was disputed by the President himself.

44. At para. 2.26, page 8, Ms Pargeter summarises the situation by saying that the "*human rights situation in Egypt is dire and the regime has a zero-tolerance approach to dissent of any kind. While the majority of arrests of Muslim Brotherhood members took place in the first couple of years after the coup of July 2013, anyone suspected of being part of or linked to the movement continues to be at risk*."

45. In terms of the issue of family members of those perceived to be part of the Muslim Brotherhood, Ms Pargeter indicates at paragraph 3.1, that the Egyptian regime has also pursued, and in some cases arrested, family members of Muslim Brotherhood members and supporters. She goes on to record that "*it is not uncommon for the security services to raid the family homes of those suspected of involvement with the movement and for them to arrest family members, this being a form of intimidation usually aimed at pressurising the suspected individual*." She also notes an article from the Middle East Monitor (para. 3.7, page 11) from October 2019 which noted "*Egypt also has a history of punishing entire families to get to one member, as we have seen with the detention of Aisha Al-Shater, the daughter of top Brotherhood leader Khairat Al-Shater, and Ola Al-Qaradawi, the granddaughter of Islamic scholar Yusuf Al-Qaradawi, both of whom are being held in solitary confinement*."

46. At para. 3.15, Ms Pargeter expresses the view that it is clear that the Egyptian regime has targeted family members of those with links to the Muslim Brotherhood, in some cases arresting and detaining them as a means of intimidation.

47. In respect of this Appellant's claim, Ms Pargeter concludes at para. 4.1, that it is entirely plausible that if the Appellant's father had been suspected of being a Brotherhood member or sympathiser that he would have been arrested and detained as claimed. At paragraph 4.2, she goes on to also find plausible the Appellant's claim that his father was incarcerated in the Wadi El Natroun prison. She notes that Liman 440 is a maximum-security unit where many political prisoners, including suspected Islamist and members of the Muslim Brotherhood are held. It is a place notorious for torture and mistreatment.

48. At para. 4.3, Ms Pargeter considers that it is likely that the Egyptian regime would have sought to target and pressurise other family members as a potential source of information regarding the Appellant's father and his associates. She also concludes that the fact that the security services ransacked the family home indicates they were seeking further information about the Appellant's father and that they were trying to intimidate the family.

49. We have, overall, found Ms Pargeter's report to be useful in respect of the background to political events ongoing in Egypt at the time of the Appellant's father's arrest and imprisonment in 2014, which she considers to be plausible. We have also placed weight on Ms Pargeter's views about the potential for family members of suspected or actual Muslim Brotherhood supporters/members to be of adverse interest to the Egyptian state.

The reports of Walter Armbrust (31 January 2019 and 27 September 2017)

50. Mr Armbrust is an associate Professor at the University of Oxford, faculty of Oriental Studies at St Antony's College. We have had sight of Mr Armbrust's CV at pages 17 to 34 of the Appellant's bundle: it is clear that Mr Armbrust has a fairly extensive history of research on a wide range of themes on Egyptian culture and history. He has been studying and working in Egypt since 1981 for periods ranging from two years (on more than one occasion) to a few weeks.

51. In the **report dated 31 January 2019**, Mr Armbrust, inter alia, explains that he considers it plausible that the Appellant's father might not have attended demonstrations in Egypt despite his membership of the Muslim Brotherhood.

52. He also rejects the Home Office's criticism of the spelling of the name of the person named in one of the translated documents on the basis that these were typographical or errors of transliteration which were inconsequential. Mr Armbrust also states that Liman 440 is a notorious prison which is part of the Wadi Natroun prison complex - he goes on to clarify that this prison complex is a series of sites clustered around Sadat City on the Cairo-Alexandra Road west of the Delta. He also asserts that the Liman 440 is notorious as a place for

torturing political prisoners and specifically Muslim Brotherhood prisoners but recognises that the fact that the Appellant's father was held in that prison was not conclusive evidence that the Egyptian government considered him a Muslim Brotherhood member (page 38 of the Appellant's bundle).

53. Mr Armbrust also explains that he considers that the Appellant would face a risk on return on account of his imputed political opinion based on the Egyptian authorities' assumption that the Appellant would be a member of the Muslim Brotherhood or sympathiser due to his father's presumed membership of that organisation.

54. Despite Mr Armbrust effectively playing advocate on at least one occasion in this report, contrary to his overall duty as an expert to the Tribunal, (see for instance his contention that the discrepancy in the Appellant's father's death certificate in respect of his profession, listed as fishermen rather than mechanic, "*is not an important detail*" and his clear speculation that the Appellant's father "*could easily have worked for others as both a fisherman and a mechanic*" (page 39 of the Appellant's bundle)), we are prepared to place weight on Mr Armbrust's conclusions in this report. We have been careful to factor in his comments on plausibility as well as risk on return into our own assessment of this appeal.

55. In the **report dated 27 September 2017**, Mr Armbrust assesses the reliability of a copy of a document sent to him by the Appellant's solicitor. Mr Armbrust records that the document is a memo sent from the Metobas police station in the Kafr Al-Shaykh Province relating to an investigation of properties owned by the Appellant's father. He also records inaccuracies in the translation of the original document but goes on to say that of the three officials named in the document two of them could be corroborated as people in official positions. He also clarifies a further flaw in the interpretation which incorrectly, in Mr Armbrust's view, interpreted the words 'Liman 440 Al-Sahrawi' as a name rather than the notorious prison facility.

56. He secondly goes on to conclude that it's plausible that the authorities would have searched the Appellant's father's properties in January 2016 even though he had already been arrested in 2014. Mr Armbrust also cites the Egyptian authorities' common practice of using family members to coerce confessions or information from prisoners and that is also common for investigations to continue for years.

57. We are again prepared to give weight to the two main conclusions drawn by Mr Armbrust in this report and we accept his view that the investigation unit memo at page 49 of the Appellant's bundle was inaccurately translated and that the reference to 'Mr Liman Naa Al Sahrawi' (at page 49 of the Appellant's bundle) is a misunderstanding

of the Arabic document which is addressed to the prison (not a person) in which the Appellant's father was being held.

58. We also accept the views given by both Ms Pargeter and Mr Armbrust that the Liman 400 prison is a place in which some political prisoners are held (including Muslim Brotherhood members) and, it seems, mistreated.

59. In approaching issues to do with plausibility we have been careful to keep in mind the Court's view of the approach to the assessment of plausibility as described in *Y* v Secretary of State for the Home Department [2006] EWCA Civ 1223 (at paras. 25-27) and been careful to make such findings as there are through the prism of the appellant's own claim and the conditions in the proposed country of return.

60. Bringing all of this together so far, we are prepared to accept in the round that:

    a. It is not implausible that the Appellant's father could have been a member of the Muslim Brotherhood without necessarily attending demonstrations.

    b. It is not implausible that the authorities might have searched the family properties in January 2016.

    c. The Liman 400 prison does house political prisoners, although not exclusively and that this is the prison in which the Appellant's father was held.

    d. The Appellant's father's arrest in 2014 is not inconsistent with the specifics of the crackdown going on against the Muslim Brotherhood at that time.

61. We also reject the Secretary of State's reliance upon s. 8(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (see paras. 53-59 of the RFRL). In those paragraphs the Secretary of State criticises the Appellant for not claiming in other countries deemed safe by the Home Office, on his route to the UK.

62. In our judgment the Secretary of State has wholly failed to properly factor in the Appellant's minority at the time he was travelling through Italy to the UK. On the Appellant's chronology, he left Egypt in 2015 when he was 14 and arrived in the UK in October 2016 (when he was 15) as an unaccompanied minor. The Secretary of State's criticism, which was not relied upon with any great vigour by Mr Tufan in his oral submissions, also falls foul of the Court of Appeal's view of this issue in KA (Afghanistan) v Secretary of State for the Home Department [2019] EWCA Civ 914 at [47]:

> "I would add that irrespective of Mr Bedford's third point, as to the compatibility of s.8(4) with Article 8.4 of the Dublin III Regulation, it is clear that an unaccompanied minor (with no

> family connection in the EU) is entitled to make an asylum claim in any EU country without risk of being returned to the EU country in which he or she made his or her first footfall or his or her first asylum claim: see *R (MA(Eritrea) & ors.) v Secretary of State for the Home Department* (CJEU – June 6, 2013) Case C-648/11 [2013] 1 WLR 2961, especially paragraphs 55 to 66 of the judgment. In such a case, one might expect a decision maker not to be over-exacting in downgrading a child's credibility for having failed to make earlier claims in other countries. In my judgment, the question of failure to make an earlier asylum claim might be thought to attract less adverse weight in the case of an unaccompanied minor than in other cases."

63. We have therefore concluded that this issue does not materially impact the core of the Appellant's credibility.

64. We have however, despite the expert evidence providing some support for the plausibility of the Appellant's claim and despite our rejection of some of the points made against the Appellant's core credibility by the Secretary of State, ultimately come to the conclusion that the Appellant is not a credible witness, applying the lower standard, for the reasons that we now give.

The Appellant's knowledge of his father's involvement with the Muslim Brotherhood

65. One of the recurring issues over the course of these proceedings has been the Appellant's knowledge as to what his father had been accused of by the Egyptian authorities. It is plain that, although we have preserved findings that the submitted documentary evidence is in effect reliable, those particular documents do not provide any detail as to the reason why the Appellant's father had been arrested and imprisoned.

66. In his oral argument, Mr Sellwood relied upon the background evidence and the expert view that the Appellant's father had been arrested at a time when the military were clamping down on those perceived to be associated with the Muslim Brotherhood and argued that this was sufficient to meet the lower standard taking into account the Appellant's minority when he was in Egypt.

67. In our judgment, whilst the background evidence certainly does not contradict the Appellant's belief as to why his father was arrested it also does not, for instance, suggest that people were only being arrested at that time if they were associated with the Muslim Brotherhood. We have explained below why, despite this general consistency with the background/expert evidence, we have rejected the reliability of the Appellant's claim as to the reasons for his father's arrest.

68. Mr Sellwood also made the submission that it was difficult to see what other reason there could be for the Appellant's father being detained, but in our view there is, with respect, no merit in that point. Neither expert suggested that Liman 440 prison only houses political prisoners and so that clearly means that the Appellant's father could have been imprisoned for other, non-political, reasons.

69. During the oral evidence the Appellant stated that he had never asked his mother what the indictment to the trial was specifically about. He went on to say to the Tribunal that he only knew that the accusation was that his father was involved with the Muslim Brotherhood. In his submissions Mr Tufan argued that it was simply not credible that the Appellant would still have not asked his father's lawyer what the indictment against his father was after all the years which had passed.

70. We have considered this point very carefully bearing in mind the documentary evidence provided by the Appellant has been accepted as reliable by the First-tier Tribunal, but we have ultimately concluded that this is an adverse point which goes against the Appellant's core claim.

71. In the final witness statement dated 3 September 2020, the Appellant states at para. 12 that he had contacted his mother and asked her to give him the details of his father's lawyer in Egypt. The Appellant goes on to say "*she said that she has tried to contact him but it has not been possible as she lost contact with him when my father died. My mum is not a very educated woman, she left school when she was young and doing these kinds of things is difficult for her*" (sic).

72. In our judgment it is not unreasonable to expect that the Appellant, now an adult, and with legal representation, would have made enquiry as to the identity of his father's lawyer with his mother and/or his extended family and sought to obtain evidence from that lawyer to confirm the material issue before us as to whether the Appellant's father's imprisonment, corroborated by the reliable documentation sent from Egypt, was in fact predicated upon an accusation by the Egyptian authorities that the Appellant's father was a member of the Muslim Brotherhood. In our view the Appellant's claim that his mother was not a very educated woman does not reasonably explain such an absence. We note that other members of the family were at the trial and the Appellant's cousin sent documents to the UK via Facebook.

73. We see no merit in any suggestion that even if relevant information had been obtained it was likely that charges against the father would not have stated the true nature of the prosecution. There is no sound reason why the Egyptian authorities would have wished to disguise this: after all, from their perspective, they were simply seeking to bring those allegedly connected to a terrorist organisation to justice.

74. We have therefore concluded that this is, overall, a significant point against the Appellant's core credibility.

The raid on the family home – authorities' interest in the Appellant

75. The Appellant has also claimed that the family home was raided on the basis that the Egyptian authorities were looking for him and that this adverse interest remains to this day. During the hearing the Appellant was asked by the panel, with reference to paragraph 16 of his 31 January 2019 witness statement, whether he had made any contact with the governmental human rights organisation whom, he says, came to the family home in order to view the aftermath of the raid. His answer was no and that he had felt safe in the United Kingdom.

76. In his submissions Mr Sellwood argued that it was important to note the Appellant's evidence in the witness statement was that this unnamed human rights organisation had taken no further action. He went on to contend that it was difficult to see what further contact with that organisation would bring to the advancement of the Appellant's case if they had taken the view that no further action was appropriate.

77. Overall, we have reached the conclusion that this is an adverse credibility point. We consider that we have not been given a reasonable explanation as to why, again bearing in mind the length of time the Appellant has been going through these proceedings and with legal representation during that time, he has not sought to at least attempt to make contact with the human rights organisation in Khafre Al Sheikh. It is of course possible that the organisation could have responded by saying that they had no record of attending the property on that day but is clearly also possible that this organisation could hold a record of the complaint and would be able to confirm this even if the outcome had been to take no further action.

78. We consider that this evidence could plainly have been important in corroborating the Appellant's underlying claim and the failure to even seek to obtain it is a matter which damages his credibility at the lower standard.

Other family involvement in the Muslim Brotherhood

79. We also consider that the Appellant's claim that two family members were also arrested and held for some time by the Egyptian authorities in respect of allegations of involvement with the Muslim Brotherhood has not been credibly made out at the lower standard of proof when placed in the overall context of the evidence that we have considered.

80. We have been drawn to that conclusion by the additional failure of the Appellant to seek to provide evidence from his two family members who, he claims, had relocated to the UAE and Libya respectively in order to be away from difficulties in Egypt. It is already the Appellant's case that one of his family members Saad has access to Facebook (and has sent images of documents to the Appellant) and we consider that there is ultimately no reasonable explanation in this case for the absence of evidence from the family in Egypt or elsewhere to corroborate the two arrests (and indeed the reasons for apparently leaving Egypt).

81. Such a finding also extends to the failure of the Appellant to provide any supporting evidence from his mother or cousin in respect of his father's political involvement, the raid on the house, the ongoing adverse interest in the Appellant and so on. We note that the Appellant claims that his mother is not well educated but we consider it reasonable to conclude that she could have been assisted in providing a witness statement or letter by the family in Egypt or the Appellant's legal representatives.

82. In his oral submission, Mr Sellwood averred that the fact that there were potentially gaps in the documentary evidence was a matter in the Appellant's favour bearing in mind that the Appellant had already produced documents which had been accepted as reliable. He argued that there would not be gaps if the Appellant was seeking to pursue a false claim.

83. We reject that submission. The Tribunal's role, as established in authority, is to assess if there is a reasonable explanation for the absence of evidence which could logically have been adduced (see SB at [46], as quoted above) and in our view, for the reasons given, we consider that the Appellant has not reasonably explained his failure to attempt to obtain potentially highly important corroboratory evidence from his father's lawyer, the human rights organisation in Khafre Al Sheikh, or his family members, especially where his family have already assisted in providing him with some documents.

84. As we have sought to emphasise throughout these findings, we recognise that there is no legal duty upon the Appellant to corroborate his claim, but we have also sought to explain why, in our view, even applying the lower standard of proof, the absence of evidence which could have substantiated his case has not been reasonably explained and leaves significant gaps in the overall evidential picture.

85. On that basis we have not been able to accept the Appellant's core claim that his father was imprisoned on the basis of actual or perceived involvement with the Muslim Brotherhood or that there was or is adverse interest in the Appellant.

RISK OF PERSECUTION/RISK OF SERIOUS HARM ON RETURN TO EGYPT

86. We have therefore reached the overall conclusion that although the Appellant has established that his father was imprisoned in Egypt for six years and that his father died of a brain haemorrhage in 2018, he has not credibly made out his claim that the reason for his father's imprisonment was because the Egyptian authorities considered him to have association with the Muslim Brotherhood.

87. As a consequence we have also reached the conclusion that the Appellant has not been truthful in respect of his claim of ongoing adverse interest from the Egyptian authorities against him either on the basis of the father's real or imputed political beliefs and connections or on the basis of the Appellant's imputed political beliefs or connections.

88. On that basis then we have concluded that the Appellant would not be at real risk of persecution and/or serious harm on return to Egypt on the basis of any adverse interest from the Egyptian authorities. We also satisfied that the Appellant has no other reason for claiming a real risk of persecution/serious harm on return to Egypt and therefore we have reached the overall conclusion that there would be no breach of the refugee convention or Articles 2 and 3 of the ECHR by this Appellant's removal to Egypt.

89. Equally the Appellant has not shown a real risk of serious harm for the purposes of Article 15(b) of the Qualification Directive or 339C(iii) of the Immigration Rules (humanitarian protection).

ARTICLE 8 ECHR

90. Mr Sellwood indicated during the hearing that he was not withdrawing his reliance upon Article 8 ECHR but would not be concentrating upon it as the main focus of his submissions to the tribunal. We have sought to apply the guidance in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 as endorsed by the UKSC in Sanambar v Secretary of State for the Home Department [2021] UKSC 30.

91. In our view there would not be very significant obstacles to the appellant's reintegration into Egypt as per the test in 276ADE(1)(vi) of the Rules. We bear in mind that the appellant is now an adult, he speaks Arabic, he has no particular health problems and he is in contact with his family. Again, as a consequence of our earlier findings there is simply no reason why the appellant could not return to his family unit in Egypt.

92. In applying s. 117B of NIAA 2002, we have decided that ss. 117B(2 & 3) do not apply against the Appellant but are effectively neutral; the

Appellant's residence in the UK has been precarious since he entered in 2016 and we give little weight to his private life in the UK (s. 117B(5)).

93. We therefore take the view that there are no other reasons outside the Rules which constitute the kind of exceptional circumstances which might otherwise lead to a grant of Leave to Remain.

DECISION

The Appellant's Refugee Convention appeal is dismissed.

The Appellant's humanitarian protection appeal is dismissed.

The Appellant's Articles 2/3 ECHR appeals are dismissed.

The Appellant's Article 8 appeal is dismissed.

TO THE RESPONDENT

FEE AWARD

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

Signed  Date 25 July 2021

Deputy Upper Tribunal Judge Jarvis

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email