



IAC-AH- -V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06795/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On the 21 September 2022**

**Decision & Reasons Promulgated
On the 1 November 2022**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**MMS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, counsel instructed by UK Lawyers & Advocates
London

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the remaking of a decision regarding the appellant's appeal against the decision of the Secretary of State, dated 1 July 2019. to refuse his protection claim.

Anonymity

2. An anonymity direction was made previously and is reiterated owing to the nature of the appellant's protection claim.

Background

3. The appellant is an Egyptian national who left Egypt during June 2014, only arriving in the United Kingdom during May 2015, having spent the intervening period in Italy and France. The basis of his protection claim was that he was working for the Muslim Brotherhood (MB) since he was aged twelve until he left Egypt at the age of sixteen. That work involved taking money from charitable donations to give to impoverished families. In addition, the appellant claimed that he was arrested while attending a demonstration on 15 September 2013 which took place in front of the security forces building. During his claimed three-day detention, the appellant was accused of carrying out specific terrorist acts. Four days after his release from detention, the appellant claims that he was summonsed to court but released after his father paid 4,000 guineas for his bail. Following his departure from Egypt, the appellant claims that he was sentenced in his absence to 10 years' imprisonment. The appellant claimed to fear ill-treatment at the hands of the Egyptian authorities and followers of President al-Sisi.
4. The appellant's protection claim was refused by way of a letter dated 1 July 2019. While the appellant's nationality was accepted, the respondent rejected his claimed date of birth and his application was therefore considered based on him being an adult. The Secretary of State rejected the remainder of the appellant's claim owing to a want of credibility.
5. The appellant appealed. At the hearing before the First-tier Tribunal, the appellant reiterated his claim and added that he had attended MB demonstrations in the UK which had put him in further danger. The appellant's claims as to events in Egypt were rejected by the judge for similar reasons as provided in the decision letter. As for his alleged sur place activity, the judge rejected his claimed involvement with MB in the UK and accepted only that he had been a 'disinterested and unengaged' bystander at a single demonstration which took place after his protection claim was refused and that this activity would not put him at risk. His appeal was dismissed by First-tier Tribunal Judge Shore in a decision promulgated on 19 January 2021.
6. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 11 February 2021. Following a hearing before the Upper Tribunal on 8 April 2022, the decision of the First-tier Tribunal was partially set aside, with the judge's findings on the appellant's pre-flight claim preserved. The appeal was listed for a continuance hearing in the Upper Tribunal owing to the preserved findings, with directions.

7. Shortly before the hearing, the appellant submitted his further evidence, which was followed by a request by the respondent, made on the day of the hearing, to adduce the First-tier Tribunal determination relating to the appellant's witness. Also produced on the day of the hearing was the appellant's skeleton argument and a link to the respondent's July 2020 CPIN - 'Egypt: Opposition to state,' as well as the June 2022 Country Background Note on Egypt.

The hearing

8. Ms Ahmed had not had sight of the previous bundles relied upon by the appellant and she was given additional time to prepare. There was also some discussion on the preserved findings. It suffices to say that I accepted the representatives' joint position that the judge's description of the viewing of the video, set out at 29.20 and 29.21 of the decision and reasons were of a factual nature and could be preserved. I did not accept Ms Ahmed's submission that the judge's findings on whether the appellant's family were visited by the authorities ought to be preserved because it was unclear whether this claimed event related to pre-flight issues or sur place matters.
9. Thereafter, I heard oral evidence from the appellant and his witness, SEGB, both of whom were subject to thorough cross-examination. I then heard submissions from both representatives.
10. Ms Ahmed made the following points. The appellant was not credible as shown by the preserved findings on his pre-flight claims. The documentary evidence showed the appellant attending one demonstration, which the respondent accepted was an anti-Al Sisi protest. That demonstration attracted media coverage. The appellant was not a leader or mobiliser. There was no concrete evidence that the Egyptian authorities infiltrated demonstrations abroad. Al Jazeera was blocked by the Egyptian authorities as it is considered to support MB. The appellant was not a committed opponent and his activity had been meagre. The appellant's expert accepted that the appellant's participation is low level. The appellant had never mentioned the witness SEGB before. While the evidence of the appellant and his witness was consistent, there was no photographic evidence that the appellant and his witness had attended demonstrations together. There was no evidence from MB in the UK and the appellant provided no consistent explanation for this during his oral evidence. The appellant's risk profile on return was different from someone who was openly critical, the Egyptian authorities paid little regard to failed asylum seekers and those with a low profile faced questioning and were unlikely to be detained or ill-treated. The Egyptian authorities had no interest in a low level person who had not protested in Egypt. The appellant was a hanger on and not someone who would protest in Egypt. Ms Ahmed asked me to attach little weight to the expert report of Dr Hasan Hafidh because his findings were general, speculative and not properly substantiated, in that the expert had not addressed whether the appellant's role was significant. There was a reference in the report to the appellant being westernised

which was unsubstantiated. Mr Jafar confirmed that this issue did not form part of the appellant's case. The example given in paragraphs 30-31 of the expert report regarding the arrest of an Egyptian agent in America was a poor example and not relevant.

11. I was asked to find that the appellant's family had not been targeted in Egypt owing to the sur place claim and dismiss the appeal.
12. For his part, Mr Jafar relied on his skeleton argument, which he closely followed, while making extensive references to the background material. In summary, he argued that the said material showed that the appellant was at risk of persecution in Egypt owing to his participation in anti-government demonstrations in the United Kingdom. He emphasised that the distinction between high and low-level profiles did not appear in the country material and where it had, in the DFAT assessment, there was no source for the proposition. The penal code applied to acts which undermined the prestige of the Egyptian state and there was no indication that this would not apply to acts carried out abroad. The appellant's witness had been found to a credible witness in his own appeal and was a victim of torture owing to his own MB involvement. I was asked to place weight on the report of the expert who was a visiting fellow at SOAS specialising in Middle Eastern Studies.
13. At the end of the hearing, I reserved my decision.

Decision on remaking

14. In reaching this decision, I have carefully considered all the evidence before me as well as the submissions made.
15. As was common ground, the appellant's pre-flight claims were rejected by the First-tier Tribunal and there being no challenge to those findings, they are preserved. This appeal concerns only the appellant's claim that he is at risk of persecution in Egypt owing to his attendance at anti-government demonstrations, organised by the MB in the United Kingdom.
16. The appellant's witness SEGB was found to be a credible witness in his own appeal and there was no criticism of him on behalf of the Secretary of State in these proceedings. His account of having met the appellant at a demonstration in the United Kingdom and having seen him on around three further occasions at other protests was adequately detailed and consistent with the account given by the appellant both in his oral evidence as well as in his witness statement. I therefore could see no reason to reject his testimony that the appellant attended four such demonstrations.
17. Otherwise, I treat the appellant's claims with caution given the findings of the First-tier Tribunal. While I accept that he has attended more than one demonstration, there was a dearth of evidence before me which could begin to establish that his attendance was owing to genuine political

beliefs. His witness statement signed on 13 January 2021, makes no such claims. Instead that statement, as far as the sur place activities are concerned, asserts that the appellant's life is at risk owing to his attendance. He gives no details of any other political activity. I have taken into consideration that SEGB's statement refers to the appellant actively supporting MB as well as regime change in Egypt however, I heard no evidence of any activity other than attending demonstrations and there is also an absence of any supporting evidence from the leadership of the MB in the United Kingdom.

18. I therefore conclude that it is reasonably likely that the appellant's activities do not extend beyond attending protests organised by the MB. It was not argued on the appellant's behalf that he had anything other than a low political profile. For the respondent it is accepted, as is apparent from the CPIN, that an MB member with a profile would be at risk of persecution in Egypt.
19. I do not accept Ms Ahmed's criticisms of Dr Hafidh's report. Contrary to her assertion that his opinion was unsubstantiated, it is apparent from a cursory consideration of his detailed report that there were dozens of footnotes which, in the main, referenced the reports of mainstream human rights organisations. Ms Ahmed rightly did not seek to question Dr Hafidh's expertise on the Middle East, which is extensive. I therefore place weight on Dr Hafidh's expert opinion as to the risk to the appellant owing to his attendance at anti-Egyptian government protests in the United Kingdom. Protests organised by MB. I accept that Dr Hafidh's reference to the appellant being seen as Westernised is misplaced and I have not included this matter in my consideration.
20. The respondent's Country Policy and Information Note Egypt: Opposition to state Version 1.0 July 2020 summarises the general position, at 2.4.1, as follows

The government tightly controls the political space, restricting freedoms of expression, association and assembly, reacting repressively to perceived challenge including, reportedly, using arbitrary arrest and detention, intimidation, excessive force, and extrajudicial violence against perceived opponents. While the crackdown against the opposition was initially aimed at the Muslim Brotherhood, it has expanded to include anyone criticising the government.
21. The said CPIN at 4.2.7 refers to several reports of the 2019 protests including the following;

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...

22. The Home Office Country Background Note on Egypt, dated June 2022, includes the following reliance on the DFAT Country Information Report-Egypt, dated 17 June 2019, regarding the position of returnees, at 19.4

'DFAT assesses that Egyptian embassies or other officials usually take note of political activities conducted by Egyptians abroad. However, only particularly high-profile cases (i.e. those that gain media notoriety in Egypt) are generally of interest to Egyptian authorities. Lower profile political activists may be questioned on return to Egypt but are unlikely to be detained or otherwise mistreated.

23. The aforementioned CPIN further quotes the DFAT report at 5.5.9, 5.5.10, 5.5.11, in particular noting;

'In-country sources report that the government and state media consistently blame the Brotherhood (and terrorism) for all manner of domestic woes... While there is a degree of (unexpressed) public cynicism about this practice, it has reportedly created a social environment whereby any affiliation or connection with the Brotherhood - or any attempt to express political dissent - is considered evidence of supporting terrorism. This has resulted in a number of arbitrary arrests, prosecutions, and dismissals...

'DFAT assess that Muslim Brotherhood leadership figures and members who continue to pursue political activities actively either within or outside the party structure are highly likely to be arrested and prosecuted. Ordinary inactive members, party supporters and those with family links to members are less likely to be personally targeted, but still face a risk of arrest, prosecution, or dismissal from state employment should their affiliations become known to authorities. All persons with MB links are likely to be subjected to surveillance and monitoring of their activities.'

Freedom House observed in its report covering events in 2019: '...While some Islamist parties still operate in a precarious legal position, the Muslim Brotherhood was outlawed in 2013 as a terrorist organization, and its political party, the Freedom and Justice Party (FJP), was banned. Since then, authorities have systematically persecuted its members and supporters.

24. A Human Rights Watch report which post-dates the DFAT report as well as the 2019 protests in Egypt, sets out accounts of the detention and serious ill-treatment of twenty children owing to suspicions that they, or someone they were associated with, supported MB.

25. The core element of the appellant's claim is whether his fear of ill-treatment if returned to Egypt as a result of his political activities in the United Kingdom is reasonably likely to occur. The material before me gives numerous examples of occasions when the Egyptian authorities, acting with impunity, have arrested and ill-treated those they suspect of having connections to MB or to be engaged in any type of activity in opposition to the Egyptian government. Examples in the CPIN include people who were arbitrarily arrested and tortured for being in the vicinity of protests, for being on social media wearing a yellow vest or filming public protests. The evidence indicates that pretrial torture is systematic, that trials proceed in unfair circumstances including the arrest of defence lawyers. The objective material states that any affiliation or connection with the

Brotherhood or attempt to express political dissent is considered evidence of supporting terrorism; that MB members and supporters are systematically persecuted. It is clear from the evidence that a person pursuing MB activities in Egypt is likely to be arrested and prosecuted and that all persons with MB links are subject to surveillance and monitoring.

26. It is not in dispute between the parties that news websites are regularly blocked with Al-Jazeera being one of those identified at 7.5.7 of the CPIN. I reject Ms Ahmed's suggestion during her submission that the Egyptian government would prevent itself from viewing blocked websites as well as the general populace. It is more likely, that the Egyptian authorities would mine blocked news sites for information as to those opposing its policies.
27. In *Danian* [1999] EWCA Civ 3000 Brooke LJ held:

"For all these reasons I do not accept the Tribunal's conclusion that a refugee sur place who has acted in bad faith falls outwith the Geneva Convention and can be deported to his home country notwithstanding that he has a genuine and well-founded fear of persecution for a Convention reason and there is a real risk that such persecution may take place. Although his credibility is likely to be low and his claim must be rigorously scrutinised, he is still entitled to the protection of the Convention and this country is not entitled to disregard provisions of the Convention by which it is bound, if it should turn out that he does indeed qualify for protection against refoulement at the time his application is considered."
28. The respondent accepts that the appellant attended one specific demonstration, a video of which was posted on Al Jazeera's 'Mubasher Channel' on 22 September 2019. I have viewed this video via a link provided by the appellant. The parties agreed that the description of the appellant's involvement in the demonstration as set out in 29.20-29.21 of the First-tier Tribunal decision was accurate and could be adopted. In short, the clip shows that the appellant was on screen for around ten minutes. At various times, the appellant stood at the front of a group of around 40 people, he held an Egyptian flag and he stood at the back and held a poster for a period. A certified translation has been provided for the news bar at the top of the Facebook video which reads '*Demonstrations of the Egyptian community in London, Milan in Italy, Cape Town in Africa, and Hamburg Germany, in support of the demonstrations calling for President Sisi's removal.*' Also translated was a statement of an Egyptian national which was that 'Aljazeera satellite channel office in Egypt must be open' as well as the slogan shouted by protesters, which was 'Go away Sisi.'
29. I accept that the appellant is reasonably likely to come to the attention of the authorities because of his involvement with the September 2019 protest which was aired on Al Jazeera, a news site monitored by the Egyptian authorities. In addition, I accept that this is not the only demonstration attended by the appellant. I find, in view of the background material, that it is likely that the Egyptian authorities have the willingness and means to identify those attending protests abroad.

30. Indeed, in *YB (Eritrea)* [2008] EWCA Civ 360, the following was said on this topic.

“... the Tribunal ... were not prepared to accept in the absence of positive evidence that the Eritrean authorities had “the means and the inclination” to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which ‘paints a bleak picture of the suppression of political opponents’ by a named government, it requires little or no evidence or speculation to arrive at a strong possibility, - and perhaps more - that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups.’

31. Notwithstanding my concerns as to the appellant’s motivation for his political involvement, I find, given the lower standard, that there is a real risk that the Egyptian authorities would regard him as a political opponent.

32. I have carefully considered whether the Egyptian authorities would dismiss the appellant as a hanger-on rather than a genuine political opponent but find there to be little basis for such an optimistic view. In this I am guided by what was said, regarding a similarly repressive regime, in *KS (Burma)* [2013] EWCA Civ 67.

‘The second flaw is the underlying assumption that the Burmese authorities in Rangoon operate a rational decision making process which can reliably be trusted to distinguish between a genuine political opponent and a hanger-on. There is no evidence of how the authorities, faced with a person identified and photographed participating in an anti-government demonstration outside the Embassy in London might go about satisfying themselves that the person in question is simply an opportunistic hanger-on. The general evidence about the behaviour of the authorities does not support a tendency to rational, careful assessment. The accepted evidence is of a repressive, arbitrary regime. A presumption of rational assessment - which is what paragraph 93 amounts to - is, in my judgment, counterintuitive in the context of the rest of the accepted evidence. The confidence placed in the Burmese authorities is not supported by evidence.’

33. While mindful that I am considering whether there is a risk of persecution in Egypt, I have carefully considered the factors set out in the headnote of the decision in *BA (Demonstrators in Britain - risk on return) Iran CG* [2011] UKUT 36 (IAC). Relevant in this case is the nature of the appellant’s sur place activity, in that the theme of the demonstration is regime change which is obviously likely to attract the adverse attention of the Egyptian authorities. Also relevant is the appellant’s role in the demonstration in that he was seen to be active in that he variously, stood at the front, held a flag as well as a poster, albeit I find that he could not

be described as a leader or mobiliser. It is the case that there was publicity attached to one of the demonstrations attended by the appellant, in that it attracted media coverage. In terms of extent of participation, I accept that the appellant attended at least four demonstrations but there was an absence of evidence as to the recency of his involvement. The demonstration which was put online took place in front of the Egyptian embassy. In view of the background material as well as the expert opinion of Dr Hafidh, I consider it reasonably likely that the Egyptian authorities would have been monitoring those attending as well as monitoring the online footage. In terms of advanced technology such as facial recognition capability, the report of Dr Hafidh refers to the Egyptian government's use of 'advanced and sophisticated cyber software to spy on and monitor Egyptian citizens' and he concludes that it is 'likely' that the authorities would be aware of the Al-Jazeera footage featuring the appellant protesting. There is also a very recent reference in Dr Hafidh's report of an Egyptian American charged with acting as an illegal agent of Egypt in that he attempted to covertly gather intelligence in America regarding the activities of political opponents of the Egyptian president.

34. The appellant's involvement with MB, which is limited to attending demonstrations in the United Kingdom can be categorised as low level. Nonetheless, I find, owing to the background and expert evidence before me that even those limited activities are likely to put the appellant at risk given that the MB is a party which the Egyptian authorities consider to be especially objectionable.
35. Dr Hafidh's position on the lack of a clear distinction between high and low level protesters and activists is set out in his report. He explains that 'all protesters and activists are met with repression and abuse from authorities regardless of their levels of participation in protests and political opposition.' His opinion is supported by reference to recent examples of protestors being tried in 2022 for demonstrations they attended in 2013. There is no support in the background material for the submission that the Egyptian authorities would not be concerned about demonstrations taking place abroad. Indeed, Dr Hafidh sets out in some detail in his report his opinion that the Egyptian security forces have an interest in repressing political opposition abroad. That opinion is fortified with examples of the targeting of activists abroad, as well as his concern that the Egyptian Penal Code, as amended, contains provisions which could attach to those, while abroad, who have made 'false and tendentious news, statements or rumours on the internal situation within the country, with the aim of weakening confidence in its economy or undermining its stature or prestige.'
32. In summary, I find that it is likely that the appellant's attendance at demonstrations organised by MB have come or will come to the attention of the Egyptian authorities and that he would be at real risk of detention and serious ill-treatment. Accordingly, he has established that he has a well-founded fear of persecution for a refugee Convention reason.

33. Decision

The protection appeal is allowed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed: T Kamara

Date: 21 October 2022

Upper Tribunal Judge Kamara