



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

Appeal Number: PA/00344/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 17 January 2020**

**Decision & Reasons Promulgated  
On 29 January 2020**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**ME  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Selway, Brar & Co Solicitors

For the Respondent: Ms R Pettersen, a Senior Presenting Officer

**DECISION AND REASONS**

**INTRODUCTION**

In my decision dated 25 September 2019 I gave my reasons why I concluded that First-tier Tribunal Judge Holmes erred in law in his decision dated 13 June 2019. As will be seen, Judge Holmes made a number of adverse credibility findings in respect of the appellant's account of events in Egypt. Those credibility findings have not been challenged and the only criticism pursued was that the judge had failed to consider the risk merely on account of the

acceptance by the Secretary of State that the appellant had been a member of the Muslim Brotherhood (MB). I was persuaded that the judge had not adequately dealt with this aspect and the scope of the further hearing before me is captured by paragraph [20] of my decision of 25 September. That decision is as follows:

**“DECISION AND REASONS**

**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.

1. This is an appeal by a national of Egypt against the decision of the Secretary of State refusing his protection claim for reasons given in a letter dated 18 December 2017. The appellant’s appeal against that decision was previously heard and dismissed by a First-tier Tribunal Judge which was then set aside, and the matter remitted to the First-tier Tribunal for hearing de novo. The appeal came before First-tier Tribunal Judge Holmes on 11 June 2019 and his reasons for dismissing that appeal were set out in his decision dated 13 June 2019.
2. In granting permission to appeal First-tier Tribunal Judge Boyes observed:
  - ‘2. The grounds assert that the Judge erred in the deciding of the case. It is not possible to delineate the claims into separate heads due to the manner in which the grounds have been drafted however the principal point is the acceptance or otherwise of the appellant’s claimed membership of the Muslim Brotherhood. It is arguable unclear what the Judge’s view was in relation to this aspect.
  3. I will grant permission on all matter raised as complaints as they all flow from the principal complaint however it would assist the UT if the grounds were distilled into separate, clearly defined headings and thus some greater clarification could be achieved. I am sure the UT would appreciate rifle like approaches rather than blunder bus style grounds.’
3. It is not easy to discern clear grounds from the application which refers in part to general unspecified matters such as ‘... the judge has failed to address the central core of the case and has considered matters immaterial and irrelevant to any proper disposition of the appeal’. Nevertheless, it is clear that the principal focus of the grounds relates to the judge’s treatment of the appellant’s evidence of his membership of the Muslim Brotherhood, and on this aspect, it is asserted that the judge effectively ignored the submissions made on the point. It is argued there was a failure to make a finding on a material aspect of the case and that the only instance in the determination in

which the judge 'comes close to touching on the core of the matter is at paragraph 59'.

4. In addition, the grounds assert that there were matters not put to the appellant at the hearing or raised with his advocate. Among the several observations on the quality of the judge's findings and analysis of the evidence it is explained at paragraph 25:

'25. However, the primary material error of law made by the Judge is that there is no consideration of the risk to the Appellant on return merely on account of his being a member of the Muslim Brotherhood. Bearing in mind the objective materials and the submissions made in this regard, this is a manifest oversight.'

5. The basis of the appellant's claim has been that he would be at risk if returned to Egypt because of his membership of the Muslim Brotherhood and the activities he undertook in their name. His case is that he became involved with the Muslim Brotherhood at the age of 18 in 1998. In 2013 he took part in demonstrations on their behalf on some five occasions, the last of which on 15 November 2013 led to his imprisonment for thirteen months. He was released from prison on 28 or 29 December 2014 and left Egypt. He was also the subject of a court judgment from the District Court of Fakous dated 15 December 2015. The appellant was fingerprinted in Germany in June 2016 and arrived in the United Kingdom on 24 August the same year. It is claimed that a warrant for his arrest has been issued in Egypt in his absence.

6. The issue before Judge Holmes was confined to the Refugee Convention. Although Article 8 had been advanced in the Grounds of Appeal it was accepted by the appellant's representative that this was not engaged. The judge recorded at [13] of his decision that:

'Whilst the concession then made that the Appellant is a member of the Muslim Brotherhood is not withdrawn, it is the Respondent's case that the Appellant's case is demonstrably a fiction.'

7. A witness, Ms Heba Ahmed, gave evidence to corroborate the appellant's account. She had arrived in the United Kingdom with her daughter in May 2017 on a valid tourist visa and had then made an application for asylum based on a risk to herself and her daughter of FGM and a risk of harm as one who would be perceived on return having been previously suspected of being a supporter of the Muslim Brotherhood.

8. In a lengthy decision, the judge carried out a comprehensive survey of the evidence which included a photocopy document dated 15 December 2015 with the heading of the District Court of Fakous which purported to relate to a case against the appellant. It is the appellant's case that he had been sentenced by this court to a term of imprisonment of two years with labour. The judge's conclusions (and findings of fact) are set out between paragraphs [53] and [62]. In the light of the challenge it is appropriate to set out these in full.

- '53. Looking at the evidence in the round, and even bearing in mind the applicable low standard of proof I am not satisfied that either the Appellant or Ms Heba, are reliable witnesses. Indeed it is perfectly clear the Appellant is quite prepared to lie when it suits him to do so. The account of a tip-off from the police chief of Fakous of the existence of a warrant of arrest was plainly a late fabrication. I accept that a genuine claimant may through fear choose to invent elements of his evidence to seek to elaborate a claim that is at its heart true, and I have endeavoured to bear that in mind when considering the evidence he relies upon.
54. In my judgement it is quite clear that the Appellant admitted that he last spoke to Ms Heba's husband shortly before his death, and that he was present at the funeral of Ms Heba's husband. That would place him in Egypt in May 2016 at a time when he claims to have been in Belgium. I accept that the Appellant resiled from admission of attendance at the funeral having realised it was inconsistent with the account he relied upon, but he offered no explanation for how he could have spoken to his friend shortly before his death if he was in Belgium and seeking to find a place in a lorry to the UK at the time (5 months in Belgium), or why he would have done so.
55. This admission also shows that Ms Heba's evidence was untrue in a key respect. If he was present in Egypt in May 2016, six months after she claims he 'disappeared' against a background of adverse interest in him by the authorities, I can place very little weight upon any of her evidence of that adverse interest in him by the Egyptian authorities. In so saying I have borne in mind that Judge Williams accepted the evidence she gave in her own appeal, but I note the Appellant gave no evidence at the hearing of her appeal, and that Ms Heba's claim to protection was not wholly dependent upon any claim to membership of the Muslim Brotherhood, although I also note that this element of her claim was also accepted.
56. Curiously, neither the Appellant nor Ms Heba have ever claimed to have met each other, or to have worked together, in the pursuit of any Muslim Brotherhood activities whilst living in Egypt. On their evidence, although they are both educated to degree level, they lived in a tiny rural village outside the city of Fakous. The impression of rural poverty that one would ordinarily infer from the Appellant's description of this village, sits extremely uneasily with the education each of them have received, and the way they present. It is inconceivable that if they were both genuinely involved in the Muslim Brotherhood whilst living in a small rural village, that they would not have been working

together. The indication is therefore that one, or both, was not acting as claimed.

57. I am not satisfied that I can place any material weight upon the document that is relied upon as being a copy of a genuine judgement of the Fakous Court sentencing the Appellant in his absence. Indeed, all the indications are that this document is a poor forgery. I note Mr Selway's argument that a commercial forgery might be expected to be of better quality, but I reject that argument. There is of course no obligation upon an asylum seeker to provide corroboration of their claim. This Appellant has however chosen to do so, and he has had ample time to absorb and reflect upon the criticisms of its quality made by the Respondent. This document which is said to be a copy of a genuine court judgement does not bear either the full name that he claims to possess, or, his identity card number. It would have been a simple matter for the Appellant to engage a reputable lawyer in Egypt to make enquiry into this, but no such evidence has been provided.
58. Standing back to look at the evidence in the round, I am not satisfied that the Appellant left Egypt illegally, or when he claims to have done. I am not satisfied that he was detained, or that he was harassed, by the Egyptian authorities as he has claimed.
59. Equally I am not satisfied that he has any genuine interest in Egyptian politics, or that he is suspected of involvement in the Muslim Brotherhood by the Egyptian authorities.
60. The Appellant clearly remains in contact with his family in Egypt. I am not satisfied he has ever destroyed his passport, it is far more likely that it is available to him to use again should he choose to do so. In any event, as one who has previously been legitimately issued with a passport, I can see no reason why he would not be issued with a replacement if he were to approach the Egyptian authorities and make such a request. He can establish who he is, using his family in Egypt, and the identity card he accepts is still available to him to use. I am not satisfied that he has come to the adverse attention of the Egyptian authorities, or that he has done anything that would bring him to the adverse attention of the Egyptian authorities in the course of making any necessary identity checks prior to the issue of that replacement.
61. It follows that I am not satisfied that the Appellant faces any prospect of detention or questioning upon return to Egypt.
62. I note the Respondent's acceptance that the Appellant is a member of the Muslim Brotherhood, but even if the Appellant was interested in politics as an eighteen year

old (when he claims to have joined that organisation) the evidence points quite clearly to his having no current genuine interest in Egyptian politics. This is not therefore a situation of an individual avoiding the pursuit of a genuine commitment through fear of persecution, but of an individual with no genuine commitment; HJ (Iran). I am not satisfied that in the event of return to Egypt he would have any interest in pursuing any political activity that would bring him to the adverse attention of the authorities.'

9. I reserved my decision after submissions from both parties. In the light of the way that the grounds leap from point to point, I sought clarification of the precise nature of the challenge. Mr Selway explained that the credibility findings by Judge Holmes were not challenged and the sole basis of challenge was that the judge had failed to consider the risk merely on account the appellant have been accepted as a member of the MB. As to whether this aspect had been adequately dealt with in particular in [62], Mr Selway referred in detail to the country evidence before the judge which he contended supported the case that membership of MB alone was enough to put the appellant at risk. Mr Diwnycz considered that the judge had dealt with the issue 'appositely'.
10. The context is the Secretary of State's acceptance of the appellant's membership of the Brotherhood. After noting the evidence given by the appellant at interview and information taken from the CIPN report on Egypt dated July 2017 the Secretary of State concluded at [41] of the refusal decision:
  - '41. Taking into account your consistent claims of involvement in the MB; your knowledge of the group, and country information which reinforces your reasons for recruitment and role, and finally, the sheer number of members which makes it reasonable to accept possible involvement, it is accepted you are a member of the Muslim Brotherhood.'
11. Thereafter the specifics of the claim were considered in some detail (as to the demonstration and arrest and the court order) after which they were rejected. In the course of this exercise the Secretary of State explained at [57]:
  - '57. **Country Policy and Information, Egypt: Muslim Brotherhood, July 2017** states,
    - 'The authorities are unlikely to have the capacity, capability or interest in seeking to target all persons associated with the MB given the size and variety of the membership and support base. The evidence does not establish that merely being a member of ... the MB will place a person at risk of persecution or serious harm.' (**Paragraph 2.2.5**)'
12. This set the scene for dispute before the First-tier Tribunal with credibility and risk assessment based on the matters accepted. As to the former, Judge Holmes carried out a detailed analysis of the evidence and it is unsurprising that Mr Selway conceded there

was no challenge to his credibility findings. These included the finding at [58] that the appellant did not have any 'genuine interest in Egyptian politics or that he is suspected of involvement in the Muslim Brotherhood by the Egyptian authorities'. And, furthermore, as confirmed in [60], 'that he has done anything that would bring him to the adverse attention of the Egyptian authorities' in relation to identity checks for a replacement passport. Judge Holmes found also in [61] that the appellant did not face 'any prospect of detention or questioning upon return to Egypt'. He then turned in [62] to a risk assessment based on the Secretary of State's acceptance of membership of the MB and explained that even if he had been interested at the age of 18 when he claims to have joined, he reiterates his finding that he had no 'current genuine interest in Egyptian politics'. What is left after those findings is a returnee with a past interest and membership (he was 18 in 1998) and no recent history of past encounters with the authorities or political activism.

13. The country evidence that Mr Selway relied on in his submissions when arguing error comprised reports by the Immigration and Refugee Board of Canada, 'Egypt: Treatment of Members of the Muslim Brotherhood, including leaders, returnee members and suspected members, by authorities, following the removal of President Mohamed Morsi (2014 - May 2017)', 11 June 2017 and the US Department of State Report '2016 Country Reports on Human Rights Practices: Egypt', 3 March 2017. He took me to specific passages in both reports that included the Government Declaration in December 2013 that the Muslim Brotherhood was a terrorist group, thereby 'criminalizing all its activities, its financing and even membership to the group'. The Canadian Report refers to mass trials and the sentence to death of 683 people in April 2014. Further death sentences were reported in May 2016 as well as incidents of arrest of Muslim Brotherhood members in 2016 and 2017. He referred me to passages from the US Report which includes reference to numerous reports of the government or its agents committing arbitrary or unlawful killings while making arrests or holding persons in custody in the section under 'Disappearance'. The US Report specifically dealt with the charging of an individual together with 737 other defendants belonging to the Muslim Brotherhood, the trial having to have begun in December 2015 but had been scheduled for further hearing in January 2017. The US Report also refers to an estimated 60,000 political prisoners.
14. I reminded Mr Selway of the Secretary of State's position stated in the refusal letter at [57] as quoted above. To his knowledge, the CPIN Report was not before the judge and it was not for him to put that report forward. The only country information was the material that the appellant had relied on. Mr Selway was dismissive of the CPIN Report commenting 'they would say that wouldn't they' and he regarded the Canadian Report as more 'liberal'. He was unaware whether the CPIN Report included reference to the Canadian Report.
15. Judge Holmes' survey of the evidence includes reference to the CPIN Report at [47] as follows:

- '47. That there was a widespread crackdown by the Egyptian authorities against those suspected of involvement in the Muslim Brotherhood from mid 2013 is well documented. The CPIN suggests some 60,000 had been detained by July 2016 [#6.2.16]. A pattern of widespread arrests continued during 2015 and 2016. Significant sentences were handed down to those suspected of involvement in demonstrations on behalf of the Muslim Brotherhood, which were generally very violent affairs. It is difficult to see consistency between the Appellant's account of his own experiences given what he claims was the authorities' attitude towards him and their supposed knowledge of his activities, with the objective evidence of what was taking place in Egypt during 2015 [CPIN]. Put simply, why, when others were being tried and sentenced for their involvement in demonstrations and he claimed to have been arrested at one, was he not also tried? Why, during a year when there were mass arrests and trials of those suspected of being involved in the Muslim Brotherhood, was the Appellant not arrested during 2015, if he had the profile with the local authorities he claims?'
16. Whether or not the report was in the papers before him, he was unquestionably entitled to refer to it. Judge Holmes explained at [15]:
- '15. I have also referred myself to the 27 July CPIN report on the Muslim Brotherhood; although neither party had placed this in evidence it was accepted that it was plainly relevant.'
17. The CPIN Report as with the Canadian Report is a digest of country information as is the UK Report, the latter being subject to inspection by the Independent Chief Inspector of Borders and Immigration. I do not consider Mr Selway was correct to dismiss the authority of the CPIN Report in the manner he did any more than to characterise the Canadian Report as 'more liberal'.
18. The Country Policy and Information Note on Egypt: Muslim Brotherhood was published in July 2017 and describes itself as Version 3. The Canadian Report is among the many sources referred to. In the chapter headed 'Assessment of Risk' at 2.2, the following text appears:
- '2.2.1. The MB remains the main political opposition to the government despite being banned in 2013, with an estimated one million members. The group has faced a prolonged crackdown by President Abdel Fattah el-Sisi's government following the ousting of President Mohamed Morsi in July 2013 and its designation on 25 December 2013 as a terrorist organisation (see Muslim Brotherhood: history, structure, ideology and activities and Treatment of Muslim Brotherhood).



- 2.2.2 Journalists affiliated with, or perceived to be sympathetic to, the MB have also been targeted by the state. The government has also closed hundreds of civil society groups with links to the MB (see Muslim Brotherhood and affiliated groups banned).
- 2.2.3 Many hundreds of MB members have been killed or injured during protests, while thousands have also reportedly been detained, some in unofficial places of detention. There are also reports of MB supporters dying in police detention, instances of persons tortured to death and other allegations of killings in prisons and detention centres. Death sentences have been handed down to senior leaders in the MB for charges that include violence, espionage and jailbreak (see Arrests and trials).
- 2.2.4 Under the Penal Code, the government is able to detain anyone suspected of membership of the MB. However, in practice, arrests and prolonged detentions have primarily been of high - and mid-level leaders, and those taking part in protests against the government which became violent (see Arrests and trials).
- 2.2.5 The authorities are unlikely to have the capacity, capability or interest in seeking to target all persons associated with the MB given the size and variety of its members hip and support base. The evidence does not establish that merely being a member of, or, in particular, a supporter of the MB, or being perceived to support the MB, will place a person is at risk of persecution or serious harm.
- 2.2.6 Whether a person is at risk of ill-treatment because of their involvement with, or perceived support for, the MB will depend upon their circumstances, profile, activities, and previous contact and difficulties with the state. The onus is on the person to demonstrate that they are likely to be of interest to the state and subject to treatment amounting to persecution or serious harm.
- 2.2.7 For further guidance on assessing risk, see the Asylum Instruction on Assessing Credibility and Refugee Status.'
19. This is followed by a detailed survey of the evidence, including a chapter headed 'Treatment of the Muslim Brotherhood since 2013' which chronicles the evidence of the mass arrests and detentions. Extracts from the Canadian Report are at 6.3.7 and 6.3.8, as follows:
- '6.3.7 An information response by the Immigration and Refugee Board of Canada (IRBC), compiled using a range of sources mostly dating from 2014 and 2017, stated:

'A news article published on 13 July 2016 in the Daily News Egypt cites a statement from the Egyptian Foreign Ministry as stating that Amnesty International was 'not impartial. Distorting Egypt's image is in its personal interests'' (Daily News Egypt 13 July 2016). According to the same source the Foreign Ministry's statement further stated that, 'anyone who read the report will promptly know that the organisation is biased, tackling issues from only one point of view and talking with people who are hostile towards Egypt' (Daily News Egypt 13 July 2016). The Daily News Egypt indicates that Egyptian authorities have responded to the accusations of enforced disappearances by stating that 'all allegedly disappeared people are either detained pending trials or by deny[ing] knowing any information regarding their whereabouts' (Daily News Egypt 11 Dec. 2016). In January 2016, The New York Times reported that 'after months of flatly denying that anyone had disappeared in Egypt, the [Ministry of the Interior of Egypt] in early January said it was investigating the cases of 101 missing people. Last week, officials raised that tally to 130' (The New York Times 26 Jan. 2016).

#### 6.3.8 The same IRBC response also stated:

'In an annual report documenting cases of enforced disappearances in Egypt from 1 August 2015 to 15 August 2016, the Stop Enforced Disappearances Campaign of the Egyptian Commission for Rights and Freedoms (ECRF), 'an advocacy group based in Cairo' (The New York Times 26 Jan. 2016), stated that 'victims [of enforced disappearances] are usually forced to admit that they committed crimes related to their belonging to extremist groups... most notably belonging to the Muslim Brotherhood' (ECRF 30 Aug. 2016). ECRF indicates that it documented a total of 912 cases of enforced disappearances: 20 cases in 2013, 16 in 2014, 530 in 2015 and 346 in the period of January 2016 to August 2016 (ECRF 30 Aug. 2016). The same source indicates that, of the 912 cases documented, '[t]here were 891 males and 21 females' and that 321 were students, 192 had 'other occupations' (such as 'freelancer, marketer, accountant, physician, engineer, translator, technician, lawyer, pharmacist and researcher'), 86 were government workers, 16 were unemployed, and 2 were conscripts of the armed forces (ECRF 30 Aug. 2016). The same source stated that 'sometimes some of the victims of the enforced disappearance appear in videos published by [Egypt's] Ministry of

the Interiors [sic] or the Ministry of Defense confessing that they committed crimes of overthrowing the regime, belonging to terrorist groups, and other charges' (ECRF 30 Aug. 2016).'

20. Judge Holmes' analysis of the CPIN Report was in the context of the appellant's claim to have been involved in demonstrations on behalf of the Brotherhood and he expressed concerns over the plausibility of the appellant not being tried had he been involved in such demonstration. His reasoning why the authorities would not be interested in the appellant today was based on his finding that the evidence clearly pointed to the appellant having no current genuine interest in Egyptian politics having given unchallenged reasons why the appellant did not come to adverse attention in 2015 a year during which the country evidence shows there were a number of arrests as observed in paragraph [47] of his decision. It is apparent that, in the absence of any evidence that the authorities were interested in the appellant in 2015, the judge reasoned (for his conclusion in [61]) that the appellant did not face any prospect of detention or questioning upon return. The judge did not however explain (i) whether there was a residual risk simply based on the appellant's historical and inactive membership and whether this is likely to be known and (ii) whether the Secretary of State was correct in his assertion set out in para [11] above. To my mind in the light of the range of evidence of the scale and nature of the hostility of the state in recent years towards Brotherhood members, it was an aspect that required to be answered in the light of the Secretary of States concession on membership. The country information does not provide a clear answer; further evidence (if available) and submissions are required.
21. Accordingly, I am satisfied that the judge erred in his decision on this narrow but potentially important aspect and his decision to dismiss the appeal is set aside solely for a determination of the issue outlined in [20] above. The judge's finding on the appellant's profile and his findings of fact on the appellant's account remain undisturbed and are preserved. The parties are directed to file with the Upper Tribunal and serve on the other party within 21 days all evidence (with essential reading identified) on the issue. Each party is also directed to file submissions within the same time."

## DISCUSSION

I am grateful to Mr Selway for his compliance with my direction. He has provided detailed submissions together with all country information relied on including the UK Home Office Country Policy and Information Note – Egypt: Muslim Brotherhood (July 2017), being the most recent publication by the respondent on membership of the MB and its implications in protection claims. By way of submissions from the Secretary of State, limited submissions had been filed, maintaining the Secretary of State's position in the refusal letter in

the absence of sight of Mr Selway's submissions, which appeared to have crossed in the post.

At the resumed hearing, I reserved my decision after the parties' submissions. In summary, Mr Selway accepted that the appellant's membership of MB had been at the age of 18, some 22 years ago. Ms Pettersen confirmed that this aspect remained conceded. Mr Selway also accepted that there was no evidence of the appellant having undertaken any sur place activities in the United Kingdom in relation to the MB and furthermore, and he acknowledged Judge Holme's comprehensive rejection of the account of difficulties the appellant claims to have had in Egypt. No further evidence was led on that aspect. As to evidence of risk on arrival if returned, Mr Selway accepted that there was no evidence that the appellant would be asked questions or that he would face any interrogation. As to the situation post-arrival, however, he submitted that the position changed and he referred me to the extensive evidence in support of his written submissions on this aspect, in particular paragraph 58 of those submissions, which explain inter alia:

"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 (see Political Opinion (actual or imputed)) is considered evidence of supporting terrorism. This has resulted in a number of arbitrary arrests, prosecutions and dismissals ...",

and:

"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."

Support for this position appears in the Department of Foreign Affairs and Trade (DFAT) Australia Country Information Report Egypt (17 June 2019), in particular the passages between [3.52] to [3.58]. Mr Selway also confirmed that there had been no finding by Judge Holmes that any family members of the appellant had affiliation to MB. Otherwise he relied on his written submissions.

By way of response, Ms Pettersen clarified that the CPIN Report referred to above is the most recent and in respect of risk on arrival, referred me to a report by the Immigration and Refugee Board of Canada, Egypt: Exit and entry procedures at airports and land borders (2017 - September 19) dated 10 September 2019, in particular at paragraph 3.4, Egyptian Returnees, which cites the Australian report:

"Australia's DFAT reports the following regarding the treatment of returnees by Egyptian authorities:

'Egypt accepts involuntary returnees. Egyptian officials generally pay little regard to failed asylum seekers upon their return to the country, although it is possible that some individuals will be questioned upon entry, or will have their entry delayed. ... Egyptians who outstay their

work or tourist visas in other countries are regularly returned to Egypt with no attention paid to them by authorities. DFAT is not aware of failed asylum seekers being reported by airport authorities to the Ministry of the Interior or any of the security services beyond the normal processes for returning Egyptian nationals.’ (Australia 17 June 2019, para 5.39).

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this response.”

As to the Australian report, Ms Pettersen also referred me to s.3.54 of the Australian report, indicating the scale of adverse interest in MB members but argued that the appellant was not high profile. He was not an active member and any surveillance would not bring up anything that would be seen as working against them. She referred also to s.3.58 of the Australian report:

“DFAT assesses that Muslim Brotherhood leadership figures and members who continue to pursue political activities actively either within or outside the party structure are highly likely to be arrested and prosecuted. Ordinary inactive members, party supporters and those with family links to members 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.”

In her submission, the appellant would not be at a real risk.

By way of response, Mr Selway argued that the assertion in the CPIN Report cited in the refusal letter at 2.2.5,

“the authorities are unlikely to have the capacity, capability or interest in seeking to target all persons associated with the MB given the size and variety of its membership and support base. The evidence does not establish that merely being a member of, or, in particular, a supporter of the MB, or being perceived to support the MB, will place a person at risk of persecution or serious harm”,

was not supported by objective material.

Ms Pettersen disagreed and argued that the statement was a policy summary and referred to the references appearing at the conclusion of the report, which, she submitted, supported the Secretary of State’s position.

By way of response, Mr Selway acknowledged he could not press this aspect further but observed that it would have been more useful to have exact evidence. He maintained the appellant would be at risk.

I remind myself that the appellant has the burden of proof in this appeal. The evidence shows continuing adverse interest by the Egyptian authorities in the MB. The Australian report, being the most recent, is particularly useful and has been cited with approval by the Canadian Immigration Board. Mr Selway is right to acknowledge the absence of evidence of any risk that the appellant would be questioned or interrogated on return about the basis of his asylum claim. Even if he were questioned the evidence would not seem to support a

case that information gleaned would be passed to the security service. If questioned and if replying truthfully all the appellant would be able to say is that he was a member at the age of 18 of the MB and that his account of difficulties this had brought about had, however, been rejected as not true by a judge in the United Kingdom. He would need to acknowledge that he had not undertaken any MB related activities in the United Kingdom and he had no account to give on MB-related activities whilst in Egypt prior to leaving in November 2015.

Post-arrival, in the light of the blank canvas of any activities by the appellant on behalf of the MB or a finding of adverse interest by the authorities whilst in Egypt and in the absence of any evidence that his family members were affiliated to the MB, I conclude that having regard to the country information, the appellant has not established to the lower standard that he is at a real risk of being reported to the authorities as a member of the MB. He is squarely within the definition of “ordinary inactive member”. I do not find that a real risk would arise were someone were to do so in the light of the time that has passed since his claimed membership and the rejection by Judge Holmes of the claimed adverse interest before the appellant left Egypt. There is no evidence that the appellant has been politically active in the United Kingdom. As observed by Judge Holmes at [59] (cited above), he was not satisfied that the appellant had “any genuine interest in Egyptian politics or that he was suspected of involvement in the Muslim Brotherhood by the Egyptian authorities”. In the light of the absence of any challenge to Judge Holmes’s credibility findings, there is no reasonable degree of likelihood the appellant would now take up the cause on behalf of the MB and place himself at risk. Accordingly, the appellant has failed to demonstrate that his historical membership alone would place him at a real risk of harm in the event of return to Egypt.

By way of summary therefore, I set aside the decision of Judge Holmes on the limited basis explained above. I reach the same conclusion, however, and dismiss this appeal.

Signed

Date 23 January 2020

UTJ Dawson  
Upper Tribunal Judge Dawson