



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/04922/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC
On 18 December 2020

Decision & Reasons Promulgated
On 13 January 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

AI

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms M Bayoumi, instructed by Ferial Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Egypt with date of birth given as 15.7.85, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 31.10.19 (Judge Bart-Stewart), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 16.5.19, to refuse his claim for international protection on the basis of political opinion as a former member of the Muslim Brotherhood who had been sentenced by the Egyptian authorities to 4 years imprisonment with hard labour for his political activities.

2. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 13.12.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Gleeson granted permission on 14.1.20.
3. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.

The Appellant's Case & Relevant Background

4. The appellant's claim and the relevant background to the appeal can be summarised as follows.
5. It is accepted that the appellant's family have a significant history of involvement with the Muslim Brotherhood (MB) and that the appellant was personally involved from an early age. He claims to have become more involved whilst studying at university in 2002 and to have become an official member in 2005, in which capacity he helped organise meetings and participated in election campaigns. After graduation, he continued with the MB and began "*protesting the government*" in 2011. He claims to have been involved in the 2012 election campaign in which Mr Morsi was elected as President. He asserts he continued to protest after the military coup in July 2013. His case is that whilst protesting with his family in Rabaa Square on 14.8.13 he was shot through the arm and into the chest. He evaded the police and was treated in a temporary hospital and at home. He stated that at the end of 2013 he abandoned his involvement with the MB, for the sake of his family and his own safety.
6. However, he claims that on 21.11.15 he was arrested, detained and interrogated. He alleges his family paid surety for his release on 14.12.15 but on 16.1.16 he was sentenced in-absentia to 4 years' imprisonment. Despite that, he somehow managed to obtain a visa for Saudi Arabia and a passport and left Egypt on 18.2.16, allegedly bribing his way through security and after having paid a private clinic to remove the bullet so as not to set off the metal detector. He was joined in Saudi Arabia by his wife and child in February 2016. He remained in Saudi Arabia until coming to the UK, accompanied by his wife and child.
7. The appellant first arrived in the UK in March 2018 on a visa granted for medical treatment. He and his family returned to the UK from Bahrain on 12.9.18 whereupon he immediately claimed asylum.
8. The respondent's refusal decision accepts that the appellant was a former member and supporter of the MB but concluded he was neither a mid nor high-level ranking member. It was accepted that he had participated in the 2013 Rabaa Square demonstration but not that he had been arrested and sentenced by the Egyptian authorities, or that he had evaded subsequent arrest and detention.
9. In summary, the grounds of application for permission to appeal argue that the judge erred in:
 - i. Making factual errors and failing to consider relevant evidence;

- ii. Failing to raise concerns about the documents with the appellant's representative during the hearing;
 - iii. Appearing to go behind the respondent's concession that the appellant was a former MB member by concluding at [66] of the decision that the appellant was merely an active supporter;
 - iv. Failing to adequately consider the country expert report of Dr Fatah.
10. The Tribunal has received the lengthy skeleton argument of Ms Bayoumi, dated 17.4.20, which I have carefully considered and taken into account together with her oral submissions to me.
 11. The respondent's Rule 24 reply, dated 17.4.20, responds to the skeleton argument and the grounds of appeal. It is submitted that in a detailed determination, Judge Bart-Stewart considered all of the evidence and was clearly fully conversant with the issues involved in the claimed arrest of the appellant and the alleged reasons for that, setting out the evidence of the journalist between [39] to [47] of the decision.
 12. The respondent pointed out that the crucial issue considered by the judge was whether the appellant had been a mid to high level MB member, as alleged. Reliance is made by the respondent on the CPIN of July 2017, '*Egypt: Muslim Brotherhood v3.0*', to the effect that low-level, non-political, or inactive members and supporters, or those perceived to be supporters, are not generally targeted and it is unlikely that they will be able to demonstrate being at risk of persecution. However, each case will need to be considered on its facts. It is also submitted that it was open to the judge to reject the appellant's claim that he had been arrested on 21.11.15 or sentenced as claimed. The judge considered the purported documents, applying *Tanvir Ahmed* when considering their reliability. The respondent argues that the judge was entitled to reject the appellant's claim that at the age of 17 he was a high-level MB member and to conclude that his involvement was in fact only at a low-level, and ceased by his own admission in 2013, so that the alleged fear of persecution was unfounded. The respondent asserts that the findings rejecting as not credible the claimed arrest, conviction, and sentence to imprisonment were entirely open to the judge.
 13. In respect of Dr Fatah's expert report, the respondent points out that from [60] of the decision the judge set out the relevant sections of the report and made findings open on the evidence. It is asserted that the judge was not obliged to accept everything opined by the expert and it cannot be said that the report was not adequately considered.
 14. As Judge Gleeson noted when considering permission to appeal, the judge expressly recorded the respondent's concession, and fully accepted that the appellant was a former MB member, stating at [50] of the decision that "*there is no issue about his former membership.*" I am satisfied that the statement at [66] to the effect that the appellant was an active supporter for most of his life does not go behind the concession and is not inconsistent with the acceptance of membership at [50]. The judge also identified the challenge as being to the appellant's claim to have been arrested, detained,

convicted in absentia, and sentenced to four years' imprisonment with hard labour. At [66] the judge stated, "*I entirely agree the respondent's conclusion that on the evidence the appellant was not a high-profile member. On his evidence he was an active supporter for most of his life yet was never arrested or detained during the period that he was an activist. This suggests that there was nothing that he did that brought himself to the attention of the authorities.*" In the premises, the third ground of appeal is unfounded and discloses no error of law.

15. In her submissions to me, Ms Bayoumi placed considerable reliance on the first ground of appeal and the assertion that in the seven respects therein identified, the judge "*incorrectly recorded the evidence or failed to consider documents or unchallenged aspect of the appellant's account.*" However, this ground and the submissions advanced are largely based on an incorrect understanding of the Tribunal's decision and the refusal decision. For example, it is suggested that the findings at [30] of the decision are inconsistent with [23] and that the respondent had accepted that the appellant's account of his arrest was consistent and credible. In oral submissions to me, Ms Bayoumi repeatedly overstated the respondent's concession, which was strictly limited to that he had been a low-level MB supporter until leaving the MB in 2013. It is clear that the grounds and submissions are based on a highly selective and misleading reading of the refusal decision. Whilst [53] of the refusal decision stated that the appellant's description of his arrest and treatment by the security forces is "*detailed and plausible given the background information,*" that and subsequent paragraphs pointed out the internal and external inconsistencies in the account. Contrary to Ms Bayoumi's submissions, the respondent never stated that the account was credible. Ultimately, at [75] of the refusal decision under the heading of '*Summary of Findings of Fact*', the respondent accepted the appellant's nationality and that he had participated in the 2013 Rabaa Square demonstration, but specifically rejected the claim to be a mid to high level ranking member of the MB and rejected the claim to have been arrested and detained by the Egyptian authorities and to have evaded subsequent arrest and detainment.
16. Mr Tan did not accept any of the alleged factual errors and further pointed out that in any event no findings were based on those alleged errors. I am satisfied that in general terms, the grounds as drafted fail to understand that between [15] and [32] of the decision the judge was summarising the respondent's refusal decision and that between [33] and [49] the judge summarised the evidence. It is only from [50] onwards that the findings and reasons are set out. Some of the grounds are based on disagreements with the judge's record of the oral evidence but without evidence that the record is inaccurate. For example, it is denied that the appellant asserted that he was a high-ranking member of the MB from the age of 17 as recorded at [36] of the decision. In her submissions to me, Ms Bayoumi put a further gloss on this ground, stating that the appellant did not claim to be a high-ranking member of the entire MB, but only at a local level by virtue of his position within the MB whilst at university. However, this appears to have been accurately recorded by the judge within [36] of the decision.

17. Other elements of the grounds pick trivial arguments with the way in which the judge summarised the evidence. For example, at [52] the judge recorded that the appellant was still in Cairo at the time he claims he was being watched. The grounds argue that the appellant never said that he was being watched, only that he felt as though he was being watched. Again, there is no evidence that the judge's record of the evidence is inaccurate. The point is not material to the outcome of the appeal.
18. In relation to the documents relied on by the appellant, I am satisfied that the judge was entitled to consider their reliability, pursuant to Tanveer Ahmed. It was for the appellant to demonstrate that they were reliable. It was not required of the judge to raise concerns with the documents within the hearing so that they could be specifically addressed by the appellant or his legal representatives. The points made about the documents in the Tribunal's decision between [50] to [55] were obvious on the face of the documents; the judge did not raise new issues in assessing those documents. In the circumstances, no error of law is disclosed by this ground.
19. In granting permission to appeal, Judge Gleeson considered it arguable that the judge erred by giving "*insufficient reason for rejecting (Dr Fatah's) assessment of the criminal law process in Egypt and the ongoing risk to former Muslim Brotherhood members such as this appellant.*" I have carefully considered the judge's treatment of the expert evidence and the relevant findings.
20. On consideration of the decision as a whole, I am satisfied that the judge was entitled to and properly did consider the risk on return for a former low-level MB supporter, taking into account the expert opinion. I note that at [153] Dr Fatah's opinion was that "*as someone who has previously taken part in activities with the Muslim Brotherhood, (the appellant) would possibly face a risk from the Egyptian authorities, if his activities are, or become known to them.*" Effectively, Dr Fatah was considering the appellant's claim at its highest, the basis of which the judge was not bound to, and did not, accept. At [61] the judge accepted Dr Fatah's expertise and that she asserted a risk to the appellant although he was no longer a formal MB or FJP member. The judge also found that the appellant had not been arrested, charged, sentenced, etc., so the primary premise of the risk described by the expert did not arise.
21. At [66] the judge accepted that the appellant was never a high-profile member but that on his evidence he was an active supporter for most of his life yet was never arrested or detained during the period that he was an activist. "*This suggests that there was nothing that he did that brought himself to the attention of the authorities.*" Contrary to the assertion in the grounds that the judge considered the risk related only to high-ranking members, at [67] the judge confirms the understanding that "*Dr Fatah considers the risk to low-level members and associates.*" However, it is pointed out that the indication is that this risk is to those with particular profiles, none of which match the appellant. Similarly, documented arrests on terrorism-related charges in 2014-15 were not consistent with the charges set out in the documents produced by the appellant, which were effectively for attending a demonstration. The judge also concluded that as he was no longer a student, he was unlikely to be one of those systematically

targeted in 2014-15. All of these findings were entirely open to the judge on the evidence.

22. Between [67] and [71] of the decision, the judge carefully assesses the expert opinion, including as to the criminal procedure in Egypt, applied to the facts found in the appellant's case, concluding by a rejection of the claim of being arrested, convicted in absentia, and sentenced to imprisonment. *"I have found that the appellant was never arrested by the authorities as a member of MB there is little before me to support the conclusion that the appellant would be considered a member of a terrorist organisation in Egypt."* At [73] the judge also pointed out that despite being strong MB supporters, no family member of the appellant came to the adverse attention of the authorities between the period of the beginning of the uprisings in 2007 up to the point of his departure to Saudi Arabia. *"This supports the conclusion that the appellant was not of high-profile and not of interest when he left Egypt."*
23. One of the reasons given for rejecting the appellant's account is the inconsistency between the detail of his claim and the objective evidence and expert opinion, including as to his being released on bail pending further investigation when the evidence was that alleged MB supporters were retained in detention and dealt with speedily (see [65] of the decision). At [69] the judge took into account the expert evidence as to the bail system in Egypt and noted at [70] that there was *"little to support the appellant's account of being bailed on serious charges with no follow-up by the authorities."* In his submissions on this ground, Mr Tan pointed to [237] of the expert report where Dr Fatah stated, *"The available evidence shows that individuals affiliated with the Muslim Brotherhood would generally not be released on bail when they are detained."* It was also observed at [236] of the report that humanitarian organisations have criticised the approach of the Egyptian authorities in seeking to extend pre-trial detention and failing to grant bail. Similar submissions were made as to the claim of the appellant being able to leave Egypt via the airport despite being the subject of an in-absentia sentence of imprisonment. He alleged that he was able to bribe security not to check his documents. Mr Tan pointed to [260] of the expert report, where limited evidence was found for security officials at Cairo Airport accepting bribes to allow wanted individuals to flee.
24. The grounds also complain that the judge did not consider a risk on return arising from *sur place* activities. At [32] the judge summarised the refusal decision to the effect that the appellant had not resumed political activity since arriving in the UK. At [74] the judge found that the appellant had not engaged in any anti-government activity since 2013. Nothing in the oral evidence summary related to *sur place* activity. Evidently, this was not an issue pursued at the First-tier Tribunal appeal hearing and Mr Tan observed that it was not addressed by the expert evidence. At [49] the judge recorded Ms Bayoumi's submission that the appellant would be at risk on return as a failed asylum-seeker but made no mention of any risk arising from *sur place* activities. In the premises, this ground was not advanced before the First-tier Tribunal and, therefore, there is no error in failing to address it.

25. In summary, the grounds are in large part little more than a disagreement with the findings and conclusions of the Tribunal. The grounds are in a number of respects flawed by a selective citation or misunderstanding of both the refusal decision and that of the Tribunal. The grounds also fail to recognise that the summary which precedes [50] of decision is not the findings and reasons which begin from that paragraph. The judge was not in error of law for not accepting at face value the expert opinion, having given clear and cogent reasons for departing from that opinion, distinguishing the risk from the circumstances of the appellant's case, or otherwise finding that the circumstances of the appellant's case did not place him at any real risk on return for any of the reasons identified by the expert opinion.

26. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the First-tier Tribunal is dismissed.

The decision of the First-tier Tribunal stands, and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 4 January 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

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

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 4 January 2021