



IAC-AH-KRL-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/03738/2019**

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC**

**On the 10<sup>th</sup> March 2022**

**Decision      &      Reasons  
Promulgated**

**On the 29 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON  
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MD  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Janjua (Solicitor)

For the Respondent: Mr C Williams (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Chohan, promulgated on 4<sup>th</sup> November 2020, following a hearing at Birmingham CJC on 20<sup>th</sup> October 2020. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before us.

## **The Appellant**

2. The Appellant is a male, a citizen of Egypt, and was born on 1<sup>st</sup> September 1997. He appealed against the decision of the Respondent dated 3<sup>rd</sup> April 2019 refusing his application for a protection claim.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he is an Egyptian, a member of the Muslim Brotherhood who had been distributing leaflets in a number of villages, following which he was identified at a demonstration where over a thousand people attended. He was at risk of the authorities. He, therefore, left Egypt clandestinely and travelled through a number of countries before arriving in the United Kingdom on 12<sup>th</sup> March 2017 where he promptly claimed asylum on the same day. After his arrival, on 10<sup>th</sup> June 2015 an arrest warrant was issued by the public prosecutor's office to have him brought before a court and investigated. On 10<sup>th</sup> January 2016 he was sentenced in absentia to five years' imprisonment with hard labour. This being so, he cannot now return to Egypt and remains in fear of ill-treatment and persecution by the state authorities.

## **The Judge's Findings**

4. The Appellant appeals against the decision of Judge Chohan of 4<sup>th</sup> November 2020. This is because the judge, whilst recognising that the Appellant was a member of the Muslim Brotherhood in Egypt which the Respondent Secretary of State did not contest, held that the Appellant was not credible in his evidence. This is because in his asylum interview (at Q.150) he had asserted that "police used to see me, some of them don't like it and they would report but I have no problems with the police anyway. The police know everything, they wait until they have the chance to catch you" (paragraph 8 of the determination). Yet in his witness statement (at paragraph 20) the Appellant had said,

"I do not know for sure how the police found out of my involvement. I know that police has informants in every town and village. I was distributing leaflets, may be that is how the police found out. I created a big awareness among the residents and encourage them to attend. I would also state that I live in a village where everyone is closely knit together and knows everyone, and they knew I was distributing leaflets, may be the police got information from them" (determination at paragraph 9).

5. The two statements, as the judge held, were inconsistent with each other because in his asylum interview the Appellant was certain that the police knew everything and he had no problems with them but in his witness statement he was suggesting that the police found out about his involvement possibly through informants.

6. Secondly, the judge rejected the Appellant's claim also because, although an arrest warrant had been produced in his absence when the Appellant had already arrived in the UK with the Appellant subsequently being sentenced to five years' imprisonment, that document made no reference to the fact that the Appellant had been tried in his absence. It is true that there was a certificate from a lawyer in Iraq corroborating the document in question, but the judge's view was that this simply replicated the contents of the public prosecutor's document.
7. Thirdly, the CPIN Report (July 2017) made it clear (at paragraph 2.2.5) that, "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". That led the judge to conclude that there was no evidence that being a simple supporter of the Muslim Brotherhood would put the Appellant at risk on return (paragraph 12).

### **Grounds of Application**

8. The grounds of application state that the judge did not look at the evidence in the round and gave undue weight to the fact that the police only came to know of the Appellant's activities after he had been distributing leaflets. However, the Appellant had presented an account which was broadly consistent with the background evidence. Moreover, the arrest warrant had been vouchsafed by a lawyer and there was a certificate from him corroborating the document. What the learned judge did not address was what the consequence of having an arrest warrant against the Appellant would be, given that it was accepted that he was a member of the Muslim Brotherhood.
9. On 17<sup>th</sup> June 2021 permission to appeal was granted by the Upper Tribunal following a remote hearing on 2<sup>nd</sup> June 2021. UTJ Reeds on that occasion noted how, "a central part of the Appellant's claim" was that following his attendance and activities for the Muslim Brotherhood he became of interest to the authorities "to the extent that an arrest warrant was issued against him. It was this document which gave rise to the enhanced risk" (paragraph 29). Moreover, as the Senior Presenting Officer on that occasion himself accepted, the arrest warrant had at the top left hand corner of it a reference to the "public prosecutor's office".
10. There was no assessment, held UTJ Reeds, by the judge below as to why this document was not genuine or unreliable. Indeed, "when looking at the translation of the document there is a date given in it of 2016 which is a date after he left Egypt and therefore on the face of it appears to support an in absentia sentence" (paragraph 32). Given that the arrest warrant referred to the imposition of a penalty of up to five years' imprisonment there was no assessment by the judge of the reliability of this document in the light of the country material cited in the CPIN (at paragraph 6.1.1).

11. The error of law finding having been made by the Upper Tribunal, it was left to UTJ Reeds to determine whether the matter should be retained in the Upper Tribunal for a substantive hearing or should be remitted back to the First-tier Tribunal. The Appellant's representative argued that it ought to go back to the First-tier Tribunal. However, the Senior Presenting Officer was of the view that the appeal should be remade by the Upper Tribunal. UTJ Reeds considered how there was a history to this claim. There had been two previous hearings before the First-tier Tribunal. The first one came before Judge Row on 20<sup>th</sup> June 2019 and the second one was before Judge Chohan on 20<sup>th</sup> October 2020. In both cases the Upper Tribunal had proceeded to set aside the negative decision reached against the Appellant, only for the matter now to return back to the Upper Tribunal on this occasion. That being so, the best course of action, which was consistent with the overriding objective, was that the appeal be retained in the Upper Tribunal for a hearing.

### **Submissions**

12. At the hearing before us on 10<sup>th</sup> March 2022 we indicated both to Mr Williams (Senior HOPO) and to Mr Janjua (solicitor) that this was a case where it was accepted by the Respondent that the Appellant was both an Egyptian and a member of the Muslim Brotherhood. Moreover, although the decision below had been set aside under the CPIN (July 2017), the current CPIN for Egypt was that of July 2020 (see bundle, pages 45 to 111). This makes it clear (at paragraph 5.1.1) and under the heading "Muslim Brotherhood", that "in September 2013 the government banned the Muslim Brotherhood (MB), 'freezing the activities of the group and all its affiliated organisations', and declared it a terrorist organisation". It goes on to say that "additionally the criminal code states that 'under Article 86 membership of a designated terrorist group may incur penalties of up to five years' imprisonment".
13. Moreover, "Article 86 also criminalises the distribution of materials, in writing or in speech, pertaining to the proscribed organisation or in service of its objectives". This was a complete fit with the Appellant's stated claim throughout his appeal hearings. If we put aside for a moment, as we explained, the veracity or otherwise of the arrest warrant, the fact was that the Appellant was an acknowledged member of the Muslim Brotherhood who would be returning back to Egypt to engage in the activities that he had already been undertaking, namely, the leafleting of subversive anti-government material at public demonstrations, and in so doing would automatically bring himself under risk (see **HJ (Iran) [2010] UKSC 31**).
14. We emphasise that this was only a preliminary view and we were prepared to hear submissions from both sides, and in particular from Mr Williams on behalf of the Respondent Secretary of State, in respect of these issues. Mr Williams confirmed that it was accepted by the Respondent that the Appellant had been a member of the Muslim Brotherhood and that the

CPIN Report of July 2020 now gave the matter a different complexion. That being so, we indicated that we would be allowing the appeal.

### **Error of Law**

15. In giving careful consideration to all the documentary evidence before us, we have reminded myself that, “the real question, as always in these cases, was, notwithstanding that which had happened ... .. whether it would be safe for this Appellant to return” (see Lord Justice Moses) in **AM (Pakistan) v SSHD [2008] EWCA Civ 1064** (at paragraph 18). We find that the Appellant satisfies the requirements of paragraph 339L in that his evidence has been coherent and plausible. This is because his evidence has been broadly consistent throughout. That evidence has been corroborated in the form of an arrest warrant. There is also a letter from a lawyer. There has been no suggestion that either the arrest warrant or the letter from the lawyer is a fabrication. Indeed, what they say is consistent with the background information. That background information now has to consist of what is set out in the CPIN Report of July 2020, which is headed “Egypt: Opposition to State” (see bundle, page 45). The stated punishment in the 2020 report is imprisonment for five years and that is how the Appellant was also punished in the arrest warrant of 10<sup>th</sup> June 2015.
16. The law relating to refugee protection is contained in the Qualification Directive (2004/83/EC) which has been transposed into the law of the UK through part 11 of the Immigration Rules and the Qualification Regulations 2006. The burden of proof lies on the Appellant and the standard of proof is usually described as a lower standard, being assessed according to “real risk” or “reasonable risk”. For the reasons we have given above the Appellant is at real risk of ill-treatment and persecution and this appeal falls to be allowed.

### **Remaking the Decision**

17. We have remade the decision, on the basis of the findings of the original judge, the evidence before him, and the submissions that we have heard today. This appeal is allowed.

### **Decision**

18. This 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

Date

A handwritten signature in black ink, appearing to read "Saminder Juss". The signature is written in a cursive style with a large loop at the end of the last name.

Deputy Upper Tribunal Judge Juss

16<sup>th</sup> March 2022