



IAC-FH-NL-V1

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

Appeal Numbers: AA/08357/2015
AA/08356/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons Promulgated
On 20 April 2016**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**MAH
AA
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Mohzam, Lawrence & Co Solicitors
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

(Delivered orally at the hearing of 8 February)

Anonymity

I maintain the anonymity order made by the First-tier Tribunal, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or other appropriate Court or Tribunal orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the Appellants. This prohibition applies to, amongst others, all parties and their representatives.

Introduction

1. The first appellant is a male national of Egypt, born in October 1979. The second appellant is his wife and also a national of Egypt, born in 1985. The couple have a child together who is dependent upon their claim but is not an appellant in her own right in these proceedings.

Grounds of appeal

2. The appellants brought an appeal to the First-tier Tribunal against the respondent's decision to remove them from the United Kingdom to Egypt, following a refusal of their asylum and human rights claims. That appeal was heard by First-tier Tribunal Judge Graves at Harmondsworth on 26 October 2015 and dismissed on all grounds in a lengthy decision promulgated on 4 November 2015. Permission to appeal was granted by First-tier Tribunal Judge Andrew in a decision of 27 November 2015, paragraph 2 of which states as follows:

"I am not satisfied that it is a material error of law to link the cases of the appellant and his wife together. They were both based on similar facts. In general the respondent accepted the appellant was a credible witness other than as to his attendance at demonstrations. He was able to give evidence as to this and proper findings were made. However, it is an arguable error of law for the judge not to have considered risk on return if the appellant were to demonstrate against the current government in Egypt but only not to do so because of fear of persecution. Permission is granted on this point alone."

3. Thus the matter came before me on one ground, which was pleaded in the following terms:

"3. The 'Judge' failed to make findings as to whether the Appellant would be at risk if he return [sic] to Egypt. The Appellant had stated in his oral evidence that he would demonstrate against the current government, but that he would not do so, only for the reason that he would then be persecuted by the authorities, see RZ (Zimbabwe) and HJ (Iran). (Please note that the Respondent accepts that the Appellant was a supporter of the Muslim Brotherhood; and had participated in demonstrations and also has a face book page)

4. The 'Judge' materially erred in law by not making any finding in regards to risk of return to Egypt."

Discussion

4. The facts upon which the appellants sought to found their cases are set out extensively in the First-tier Tribunal's decision, but given the limitations on the grounds that the appellant is now entitled to rely upon I only need to identify the following:

- (i) The appellants, and their family members, are supportive of the Muslim Brotherhood in Egypt;
 - (ii) The appellants have continued their support for the Muslim Brotherhood whilst living in the United Kingdom, attending around ten demonstrations and blogging their political views on Facebook whilst here;
 - (iii) The second appellant initially posted her views on her husband's Facebook account but later, in 2014, set her up her own account, on which she continued to assert her views;
5. It further stated that at the hearing before the First-tier Tribunal the appellants asserted that if returned to Egypt they would wish to demonstrate on behalf of the Muslim Brotherhood but would not do so because of a fear of being persecuted if they did. Despite the lack of clear evidence regarding this, I proceed on the basis that this was indeed how the appellants put their case to the First-tier Tribunal.
6. Moving on, the appellants' ground of appeal is underpinned by the point of legal principle set forth in the Supreme Court's judgement in HJ (Iran) [2011] 1AC 596, a case in which the Court recognised that a gay man would be a refugee in circumstances where (i) if he were to return to his country of nationality and live openly as a homosexual he would face a real risk of persecution on the ground of his sexual orientation but (ii) he would not in fact face such a risk because he would carry on any future homosexual relationship discreetly in order to avoid being persecuted.
7. The *ratio* of HJ (Iran) was explored further in the context of political beliefs in the later judgment of the Supreme Court in RT (Zimbabwe) [2012] UKSC 38. In RT the Court found that the legal principle identified in HJ (Iran) could be applied to a person who has a particular political belief and who would be obliged to conceal that belief in order to avoid being persecuted if he were to reveal it.
8. Turning back to the First-tier Tribunal's decision, it is not in dispute that the First-tier Tribunal properly directed itself to the standard and burden of proof, and other relevant matters, in paragraphs 24 and 25 of its determination.
9. At paragraph 26 the Tribunal concluded:

“...I am mindful of the lower standard of proof and accept that he [the first appellant] may have attended some demonstrations in this country. However, I do not find that this discharges the burden of proof to the lower standard with regard to establishing that this would bring him to the adverse attention of the Egyptian authorities.”
10. Then, in paragraph 28, the following unchallenged finding is made:

“...I do not find that the material before me demonstrates membership of the Brotherhood or that the Appellant in the United Kingdom or abroad has done any more than express some criticisms of the Egyptian Government or sympathy for demonstrators. Nor do any of the posts before me provide any mention of the Appellant attending demonstrations or having any contact or connection with the Muslim Brotherhood or any other party.”

11. Paragraph 30 is also of significance in the consideration of whether there is merit in the appellants’ ground:

“In terms of the appellant’s support for the Muslim Brotherhood, he has not become a member and does not know the identity of any of the individuals who organise the events and meetings. Mr Rana asked him if he knew where their offices are, he said that he did, but he has not been inside and never attended any of their meetings. While Mr Mohzam argues that the appellant would continue his support for them if returned to Egypt and this by itself would place him at risk, I do not accept this. If the Appellant were such a committed supporter, it is not consistent with that claimed depth of conviction and support that he has never been to their offices, despite there being no restriction on him doing so...”

The Appellant was well aware that the Respondent does not accept that he is actively involved or any more than a low level supporter, since it was clearly set out in the decision in May 2015, yet he has not provided any evidence to address that finding.” (my emphasis)

12. The grounds, if read literally, assert no more than that the First-tier Tribunal failed to engage in a consideration of whether the appellants would be at risk upon return as a consequence of their intention to demonstrate on behalf of the Muslim Brotherhood. Reading the emphasised sentence in paragraph 11 above immediately disposes of this argument. Therein the First-tier Tribunal identified the manner in which the appellant put his claim in this regard, and clearly rejected it.
13. Even if it assumed that the pleaded ground is intended to be wider in its scope than that which I have identified above, it still has no merit. Although the First-tier Tribunal made no mention of the decisions in HJ Iran and RT Zimbabwe, and it is clear that given the way in which the appellants put their claims best practice dictates that it ought to have done so, this of itself is not sufficient to lead to its decision being set aside.
14. It is plain from reading the decision as a whole, and in particular paragraph 30 thereof, that the First-tier Tribunal’s findings as to the level of support displayed by the appellants for the Muslim Brotherhood (both whilst in the United Kingdom and prior to arriving here) led it to conclude that the appellants would not act in a way which would cause them to be persecuted upon return to Egypt, for reasons wholly unconnected to their claimed fear of persecution. Once it is established that there is no nexus between the appellants not acting in a way which would lead them to be persecuted in Egypt and their claimed fear of being persecuted if they did so, it is clear that *ratio* of HJ (Iran) cannot be deployed in their favour.

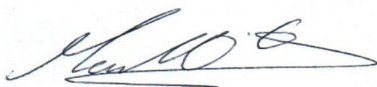
15. At the hearing Mr Mohzam sought to amend his grounds, albeit without formally asking permission do so, by challenging the rationality of the finding highlighted in paragraph 12 above. In doing so, he relied upon a claimed acceptance by the Secretary of State in her refusal letter that the appellants both support the Muslim Brotherhood, and had attended demonstrations and posted on Facebook in furtherance of such support.
16. I reject this ground for two reasons. First, I refuse to allow the appellants to amend their grounds. Insofar as there is an application to amend before me it was, without explanation, not made until the day of the hearing and was not made on notice to the respondent. In any event, if I were to have allowed such amendment I would have concluded that the ground has no merit. The First-tier Tribunal provided clear reasons for its conclusions in paragraph 30 of its decision and in my view its conclusion, when read in the context of the decision as a whole, cannot be described as being irrational.
17. I further observe, although I did not do so when this decision was delivered orally, that although it is clear the Secretary of State did accept the fact of the appellants support for the Muslim Brotherhood she did not, as asserted, accept that this support was furthered by attendance at demonstrations and posting on Facebook (See paragraphs 31 & 42 of her decision letter of 11 May 2015 and paragraphs 16 and 17 of the First-tier Tribunal's decision).
18. For these reasons I dismiss the appellants' appeal before the Upper Tribunal and the First-tier Tribunal's decision stands.

Notice of Decision

The appeal is dismissed.

An anonymity direction is made.

Signed:



Upper Tribunal Judge O'Connor