Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11416/2019

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre (remote)
On: 27th November 2020 and 7th July 2021

Decision & Reasons Promulgated
On: 26th July 2021

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

IA
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Holmes, Counsel instructed by Ashwood Solicitors**
For the Respondent: **Mr Tan, Senior Home Office Presenting Officer (2020)**
Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Egypt born in 1986. He seeks protection in the United Kingdom.

2. The Appellant claimed asylum on arrival at Heathrow Airport on the 7th April 2019. He asserted that he faced a real risk of persecution in Egypt for reasons of his political beliefs. In particular he claimed that he had been sentenced *in absentia* to 25 years imprisonment on false charges, brought against him because

the authorities believe him to be a supporter or member of the Muslim Brotherhood. The charges relate to the Appellant's attendance at a demonstration in 2014. The Appellant accepts that he did go to that protest, and that he is strongly opposed to the Egyptian regime, but denies that he is a member of the Brotherhood or that he did any of the things he is charged with doing that day, such as preparing a Molotov cocktail.

3. By her letter dated the 6th November 2019 the Respondent accepted much of what the Appellant had to say. It was accepted that the Appellant has a long-standing involvement in politics in Egypt, including organising for the election of Ayman Nour in 2005 and ongoing support for the al-Ghad party. It is my reading of the refusal letter (I return to this below) that the Respondent also accepted that the Appellant posted video clips of anti-government protests online and that these were subsequently aired on al-Jazeera and other television channels.

4. It was not however accepted that the Appellant had, as he claimed, been sentenced to 25 years in prison. The Respondent found the Appellant's evidence about how he came to know about the sentence to be inconsistent; the documentary evidence he had provided had not been translated; further the Appellant had been in and out of Egypt since the 2014 when the alleged offence had been committed, and it was reasonable to think that if he was objectively at risk of prosecution, or subjectively in fear of the same, that he would not have voluntarily spent time in the country during that period. Asylum was therefore refused.

5. The Appellant appealed to the First-tier Tribunal.

6. His appeal came before First-tier Tribunal Judge Handler on the 6th February 2020. The Tribunal's written decision was promulgated on the 10th February 2020. The Tribunal in essence adopted the reasoning set out in the Respondent's refusal letter, as summarised at my §3 and 4 above. The case had developed since that letter in that the Appellant's documents had now been translated: the Tribunal noted that but declined to place any significant weight on them because they had not been verified. On a *Tanveer Ahmed* assessment they added nothing to the evidence overall. The Tribunal further drew adverse inference from the fact that the Appellant denied having any convictions on his visa form (the Appellant had arrived in the United Kingdom in possession of a visit visa obtained in Saudi Arabia), and from the fact that one of his five names – I do not think I infringe my own anonymity order by identifying it as 'Ali' - is spelled differently in English in different documents. Finally the Tribunal had regard to the evidence regarding Facebook, but did not accept, in reasoning that I return to below in greater detail, that any of that placed the Appellant at risk.

7. The appeal was accordingly dismissed.

8. The Appellant sought permission to appeal to the Upper Tribunal. Permission was granted on the 13th March 2020 by Judge JM Holmes, sitting as a judge of the First-tier Tribunal.

9. The matter came before me on the 27th November 2020. For the reasons that are set out below under the heading 'Error of Law', I set the decision of Judge Handler aside. The matter has come back before me today so that I can 'remake' the decision in the Appellant's asylum appeal. For the reasons set out below under the heading 'The Re-made Decision' I have decided that the Appellant is a refugee as defined by Article 1A(2) of the Refugee Convention and so his appeal must be allowed on protection grounds.

Error of Law

10. It is convenient that I address the grounds, and the Secretary of State's response to them, in turn. Before I do I address some general matters arising.

11. The first I allude to at my §3 above. It relates to the matters placed in issue by the Respondent's refusal letter. The letter is dated the 6th November 2019 and followed the asylum interview in which the Appellant was asked detailed questions about his claim. At paragraph 17 of that letter the writer refers to the decision in Karanakaran [2000] EWCA Civ 11 and explains that in her assessment the Secretary of State will apply the guidance in that judgment, setting out what material facts have either been "accepted, rejected or found to be unsubstantiated".

12. The first sub-heading under the section 'Material Facts Consideration' reads "*you were actively involved in the organisation of demonstrations against the government regime*". There then follows a series of paragraphs in which elements of the Appellant's evidence on this matter receive general consideration. Paragraph 24 sets out the Appellant's evidence that he was a supporter of Ayman Nour; this is found to be detailed. Paragraph 25 outlines his claim to have helped organised events on behalf of al-Ghad; this is considered reasonable notwithstanding the Appellant's denial that he was a member of that party. Paragraph 27 outlines his claim to have helped organise various demonstrations; this information appears to attract little weight because it is "in the public domain". The matter in issue before me relates to paragraph 26. Here the letter recounts the Appellant's evidence that he had been "posting video recordings of the protests" that had subsequently been aired by TV channels, but that he had closed that account because his mother was worried. He had subsequently opened another, private, account but had not produced any evidence in support of this claim. Having set all of this out, the writer of the letter concludes:

> "28. Given the above it is considered that you have provided a credible account in relation to this aspect of your claim,
>
> 29. It is therefore accepted that you were involved in the organisation of demonstrations against the government regime"

13. Before me Mr Tan was not prepared to accept that the concession at paragraph 28 of the refusal letter extended to paragraph 26: in his view the writer had not intended to accept the Appellant's evidence about his Facebook activity. With the greatest of respect to Mr Tan, that is a reading of the letter that I am unable to accept. First, it is clear from the structure of the decision overall that the matters falling under the heading "*you were actively involved in the organisation of demonstrations against the government regime*" are in fact accepted. I say this not only because paragraph 28 says so, but because the rest of the Appellant's assertions, set out subsequently in the letter under other sub-headings, are rejected or found to be unsubstantiated. Had the writer intended to reject the Appellant's evidence about his Facebook activity, he plainly would have said so. Second, whilst Mr Tan is quite correct to describe paragraph 26 is being primarily a summary of the evidence, the same could be said for all the other paragraphs under this sub-heading: the conclusion on that evidence comes at 28. Finally, the last sentence of paragraph 26, which refers to the Appellant's failure to produce any documentary evidence, cannot assist Mr Tan, since it is clear that the decision maker had doubts about other aspects of the claim – for instance at paragraph 27 – which are nevertheless unambiguously accepted as being proven, on the lower standard of proof, at 28. I am quite satisfied that the decision maker treated the Appellant's online activity as being part and parcel of his work organising and promoting protests against the Egyptian government, activity that he is accepted to have undertaken.

14. The second point to be made relates to materiality. The Secretary of State has – quite understandably – taken the position that even if the errors alleged are made out, it matters not, because the First-tier Tribunal made other significantly adverse findings, which do not feature in the grounds. I have taken these matters into account, and I note that they are unchallenged. Whatever happens, the finding that the Appellant has been inconsistent about how he found out that his name was known to the authorities is preserved. So too the finding that the Appellant evidently felt safe enough to travel back to Egypt from Saudi Arabia in March 2016 and October 2017. In any remaking of this decision those findings will stand. I am not however satisfied that either or both of those matters are of such significance that they render all the points raised in this appeal irrelevant. Nowhere does the Tribunal say so in its decision. It is clear from its self-direction, and indeed the reasoning, that the Tribunal weighed all of its findings in the round before it reached a final decision on the Appellant's

credibility. The matters challenged herein cannot therefore be easily extricated from that global assessment.

15. Against that background, I address the matters raised by the individual grounds.

The Documents

16. The Appellant submitted two key documents, written in Arabic. He explained that they had been sent to him by his lawyer in Egypt; he provided certified translations. The first is what Mr Holmes described as an arrest warrant. Its English translation more specifically states that it is a "notice of arrest and summon for execution of criminal judgment with existence of legal representative". It is therefore what we might understand to be a bench warrant, albeit one issued after the case has been heard. It sets out the Appellant's name and address, previous address, the charges, the verdict, the particulars and instructions to law enforcement officers to enforce the warrant. The second document is much longer. Mr Holmes described as the judgment of the court – the translation terms it the "verdict of the court". The original Arabic version runs to three and half pages. The English translation shows that it names the three judges who are said to have sat at the Alexandria Criminal Court Area 9, the prosecutor and secretary. No lawyer was present for the fugitive defendant. The body of the verdict sets out the alleged events of the day and specifies 6 offences against the Appellant and a second defendant.

17. These documents were, at the date of the decision, only available to the decision maker in Arabic (Mr Holmes tells me that translations had in fact been submitted, but accepts that they do not appear to have made it to the desk of the decision maker). Consequently they attracted no weight at all in the Respondent's deliberations: untranslated they might as well not have been there. It was therefore only when the HOPO on the day, Mr Richardson, began to probe their veracity that the Respondent expressly placed that matter in issue. No criticism can be made of the PO, who was obviously doing his job. Questions do however arise from the First-tier Tribunal's treatment of these documents.

18. At its §28 the First-tier Tribunal says this:

> "Mr Richardson asked the appellant if he had considered having any of the above documents verified and the appellant said that he had not because he had been in Saudi Arabia not Egypt. That answer is not satisfactory because it does not provide a reasonable explanation. It could reasonably be expected that the appellant could make the necessary arrangements for the documents to be verified from Saudi

> Arabia. It may be that there are other reasons why such a verification exercise has not been undertaken however the answer that the appellant gave was simply that he did not ask an expert to comment on the authenticity of the documents because he was in Saudi Arabia. It would be reasonable for the appellant to have considered obtaining an expert opinion regarding the documents he has submitted. **I find the answer given by the appellant for his not having done this is undermining of the appellant's credibility**"

(emphasis added).

19. The grounds, and the written submissions, go into some detail about why it was not at all reasonable to expect the Appellant to have instructed an expert witness whilst he was still living in Saudi Arabia. For one thing it may not have occurred to him that he needed to – he had been sent the documents from his lawyer in Egypt and believes them to be genuine; he is not himself an expert in United Kingdom asylum law and could not be expected to foresee that a year later he would be cross examined about why he hadn't thought to get an expert to look at his documents. Those points are well made. The Tribunal's conclusion - that the Appellant's credibility is generally undermined – is not logically drawn from the reasoning. It could rationally be said that the lack of expert verification limits the weight to be attached to these documents, inasmuch as a positive verification would have greatly *increased* the weight due. It is not however, in my view, rational to *deduct* weight in the way that the Tribunal has apparently done. Moreover the ratio of this passage reveals that the Tribunal has in effect required corroboration of corroboration, in itself impermissible in the context of asylum claims. It is trite protection law that asylum seekers should not be expected to corroborate their claims by the production of documentary evidence, and I am far from satisfied that the expert evidence of a witness able to comment on the authenticity of these documents fell within the definition of 'readily available' materials of the sort discussed in TK (Burundi) [2009] EWCA Civ 40.

20. I am therefore satisfied that it was an error of law to treat the absence of verification as positively undermining the Appellant's credibility, a matter which in turn impacted on the *Tanveer Ahmed* assessment that the Tribunal purports to go on to make. In this respect it is important to note that the documents themselves are found [at §32] to be "generally consistent" with the Appellant's claim and "not inconsistent" with the background evidence: they are nevertheless given "very little weight" because of the credibility findings already made, and for the reasons I have found, made in error.

The Appellant's Name

21. The First-tier Tribunal draws adverse inference from the fact that the Appellant's name 'Ali' is in some of the material spelled 'Aly'. At paragraph 34

the Tribunal notes that the Facebook account uses the spelling 'Ali' instead of the 'Aly' that is on the court file; at paragraph 36 of its decision similar observations are made about the Appellant's degree certificate.

22. I am satisfied that this reasoning is perverse for the simple reason that the Appellant's name could, quite innocently, be spelled either way. His name is an Arabic name, spelled in Arabic: علي. In fact, it is a name routinely mis-transliterated into English in that the first letter is not 'A' but the Arabic letter ع (ʿain) which is commonly described as a 'glottal stop' in English. The final sound of the name is the final form of the letter ي ('ya') which can variously be pronounced 'ee' or 'ya', 'ye' or 'yi' depending on what vowel sound is connected to it. If one were to be pedantic the name, properly transliterated, would read ʿAlī, the small 'c' preceding the 'A' indicating that a glottal stop is required, and the long mark over the 'i' indicating an elongated vowel sound. I doubt very much however whether adverse inference could be drawn from the routine failure to do so. The nonsense of negative conclusions being drawn from the 'discrepancy' here is illustrated by paragraph 36 of the Tribunal's decision, where the Tribunal doubts the authenticity of the Appellant's degree certificate – a matter entirely unrelated to the case - because the name is different from that which appears on the Appellant's passport. As for the Appellant's evidence that Facebook required him to use one spelling over another, this is entirely unsurprising to any user of social media: if a 'username' already exists, the platform will routinely suggest a variant. I am not satisfied that either instance could rationally justify adverse inference being drawn.

23. I find this ground to be made out. Mr Tan did not defend the Tribunal's reasoning on this point but asked me to find that any irrationality was not material to the overall decision. In respect of paragraph 36 Mr Tan may well be right. There the Tribunal devotes an entire paragraph to the Appellant's degree certificate before concluding that the matter was not "determinative". In fact it was entirely irrelevant. It is apparent however from paragraph 34 that the Tribunal did materially draw adverse inference from the spelling 'Ali' on the Appellant's Facebook page: "[I] consider that there is doubt over whether it is in fact posts made by the appellant that have been submitted". Two errors there arise: the irrational attribution of weight to an immaterial matter, and going behind a concession of fact. As I note at my §12 above, the claims as to the Facebook page had been expressly accepted as credible by the Respondent.

Facebook

24. That brings me to the final head of challenge, concerning the findings on Facebook at §35 of the Tribunal decision. The key conclusion is this: "I find that the evidence of the appellant's Facebook activity does not materially assist his claim, taking into account what was already accepted by the respondent". I

read the latter comment as an allusion to the point I have already made: the Appellant's evidence that he had previously had an active, open account on which he posted political material had already been accepted by the Respondent. Screenshots from that Facebook page appear in the Appellant's bundle and show images of protestors and commentary. Why it might not materially assist his account is rather more difficult to understand. If the Appellant had such an account, and as apparently accepted by the Respondent it was borne of the Appellant's genuinely held political beliefs, I would have expected some analysis of whether that might place him at risk. Even if the entire account of the *in absentia* sentence was a fabrication this was still a man who has actively participated in activities against the Egyptian government, and has done so on behalf of groups politically allied with the Brotherhood. That required a discrete risk assessment, one that does not feature in the First-tier Tribunal decision.

25. The ground are not however concerned with that point. Rather they dissect the reasoning at §35 and submit it to be illogical and wrong in fact. For instance:

    (i) "It is not clear which posts were public and which were private". Before me Mr Tan and Mr Holmes disputed whether as a matter of fact it was clear from the screenshots, a matter I am unable to comment upon. I do not think I need to, for three reasons. First, the distinction was explained in Appellant's evidence, and was indeed clearly highlighted in the bundle. Second, if the Tribunal thought that evidence unclear, it could have sought clarification. Third, it is evident the earlier, political posts were public since that is, presumably, how the video clips subsequently aired on television came into the broadcasters' hands.

    (ii) [it is unclear] "how large the audience was". This is not relevant. If the posts were seen by the Egyptian authorities, they were seen. No part of the Appellant's case rested on his political views having been seen by a large audience.

    (iii) "it has not been explained how the authorities would have been able to access his Facebook posts, even if they were publicly available". In granting permission to appeal in this case Judge Holmes considered it arguable that the First-tier Tribunal applied too high a standard of proof – this sentence typifies why. It is not clear to me what evidence the Tribunal here thought should have been produced.

    (iv) "neither has he provided any detailed explanation or documentary evidence about his Facebook account being blocked" . See above.

(v) "I find that the appellant has not shown to the lower standard that he has a Facebook account that was publicly available before 2016 and which contained posts which were reasonably likely to bring him to the attention of the authorities". See my §11 to 13 above: this was not a matter in issue.

26. I am satisfied that the Tribunal's conclusions on Facebook are flawed for error of law and must therefore be set aside.

Other grounds

27. At its §24 the Tribunal apparently drew adverse inference from the Appellant's failure to explain why he couldn't get another job in Saudi Arabia. That was a matter entirely unrelated to his fear of persecution in Egypt and should not have featured in the reasoning.

28. The final point raised in the grounds concerns the reasoning at §20 of the First-tier Tribunal decision. The Appellant's evidence was that following the protest in 2014 he had waited three days before he returned home, to make sure that he had not been reported to police. The Tribunal did not think this a "reasonable explanation" for why he returned home. The Appellant challenges this finding for a lack of reasoning. He does not understand why his explanation that he waited to check that the police were not going to raid the house was not 'reasonable'. I find this ground to be made out. I do not understand the reasoning myself, so I accept that the Appellant is similarly struggling.

The Re-Made Decision

29. In the hiatus between my 'error of law' decision and the appeal being relisted the Appellant obtained the expert opinion of Mr Hugh Miles about his case. Mr Miles is an Oxford-educated Arabist who has spent his entire career as a journalist and writer working in and on the Middle East. He is married to an Egyptian and has lived in the country since 2011. He has been producing written and broadcast content about Egypt for media organisations including The Guardian, al Jazeera, The Daily Telegraph, The Mirror, The Mail and the BBC since 2004. He set up his own consultancy company in 2010 providing information and consulting services about Egypt and other Arab countries to blue-chip clients in diverse sectors including defence, law, finance and manufacturing. He has also provided consultancy services to multilateral organisations operating in Egypt including the United Nations Industrial Development Organization and the United Nations High Commission for Refugees. He is the founder and editor of the Arab Digest. I could go on, but it

is not necessary to do so, since Mr McVeety accepted without hesitation that Mr Miles is an expert on matters relating to Egyptian politics and security, and that the report he has produced in this appeal is of a very high standard.

30. There are five main points to be drawn from the evidence given by Mr Miles.

31. The first is that the human rights situation in Egypt is "generally dire". Mr Miles characterises Egypt as a "political volcano that could erupt at any time", and that the regime is doing all that it can to suppress that explosion. Wherever political opposition rears its head the regime reacts ruthlessly, deploying the police and security officers who are able to act with impunity. Human rights abuses continue to occur on a daily basis, with an estimated 60,000 Egyptians currently imprisoned because they oppose the regime. Nor are foreigners exempt – many journalists have been targeted (including Mr Miles) and the Foreign and Commonwealth Office warn tourists visiting Egypt not to express any open criticism of the government. Many dissidents have fled the country. Amnesty International have recently produced a report detailing the torture of children as young as 12 years old by members of the Egyptian security services. During the past year the government has executed perceived opponents, both formally and extra-judicially. Before me Mr McVeety accepted that this was, as far as the Secretary of State is concerned, an accurate picture. Nothing in Mr Miles' report is contradicted elsewhere. The bottom line is that if you are opposed to the regime, and that opposition becomes known to the authorities, you are reasonably likely to face treatment amounting to persecution including but not limited to arrest, detention, politically-motivated prosecution, torture or death.

32. The second is that the regime's determination to suppress any political opposition extends beyond the boundaries of Egypt. Mr Miles refers to a recent case in Germany where the authorities have charged a man employed by Angela Merkel's press office with espionage. The German intelligence agency has reportedly found that part of his role was to gather information on Egyptians living in Germany, including members of the Muslim Brotherhood and Coptic Christians. This monitoring includes social media. Mr Miles notes that the Appellant says in his witness statement that "if you post anything against the government, you will be detained and accused". Mr Miles' assessment of this evidence is: "this is essentially true". He continues:

> 132. I am aware from my work with defectors and dissidents that the Egyptian regime devotes considerable resources to spying on the opposition abroad using both signals intelligence and human intelligence. The regime's intelligence apparatus and a network of spies tries to identify dissidents in the Egyptian diaspora so that they and their families can better be targeted.

> 133. Egyptian embassies and consulates are used as bases for surveillance and intelligence-gathering on opposition political activities abroad. London is well known as one of the main centres of exiled Egyptian opposition political activity.

33. Mr Miles includes in his report a photograph that he took whilst covering a demonstration outside the Egyptian embassy in London in 2013: it shows a figure with a video camera at a top floor window, filming the protestors below. Hr further gives examples of how the Egyptian security and intelligence services seek to disrupt opposition online by monitoring, hacking and 'doxxing' perceived opponents, including himself. As such the Appellant's activity on Facebook, appearance on videos on YouTube and in particular the reproduction of this material by media outlets including al Jazeera mean that in Mr Miles' opinion "the regime probably has already identified him".

34. The third point made by Mr Miles follows from the above. This is that there is a particular, and long-standing, enmity between the Egyptian government and the Qatari funded channel al Jazeera. The network has been consistently critical of President Sisi, and has given airtime to prominent opposition activists deemed by the Egyptians to be "terrorists". The government in Cairo has responded by arresting and prosecuting al Jazeera journalists and contributors, closing its bureau, and banning the network entirely. Mr Miles believes that the Appellant's historical 'open' Facebook posts place him at "some risk today" but that the subsequent airing of his videos etc on al Jazeera increases that risk still further: "if the regime regards him as helping a "terrorist" channel, he will be treated as a terrorist".

35. Against that background, Mr Miles considers the Appellant's account to be wholly plausible. His descriptions of his work supporting Ayman Nour accords with Mr Miles' own experience: during that period he was personally present at meetings that were disrupted by "NDP thugs" and witnessed the kind of small, and large, scale protests described by the Appellant. His claim that the security services smashed up his house is consistent with other cases known to Mr Miles, and importantly, the chronology of his travel in an out of Egypt, found to be so damning by the First-tier Tribunal, is said by Mr Miles to be plausible. He explains that the regime does operate 'blacklists' of those who are wanted but that there is variability about whether those charged or convicted actually end up on such lists. He draws on evidence from the 2019 DFAT report on Egypt, as well as a consultation with an Egyptian lawyer, to confirm that it would be possible for the Appellant to continue travelling even after he had come to the regime's attention during that period.

36. The final aspect of Mr Miles's evidence concerns the court document discussed at my §16-20: the arrest warrant, and the court judgment against the Appellant. As I mention there, these documents have been available to decision makers

since early on in the process. There were however several problems arising. The translations provided to the Respondent were not linked to the file in time for them to be evaluated when the Appellant's asylum claim was assessed by the Home Office; the First-tier Tribunal had found the lack of expert verification to be damning. Today I have the opinion of Mr Miles, but not the original documents which are assumed to be languishing in a file somewhere at the Home Office. As Mr Miles explains, that has given rise to other difficulties:

> 120. If these documents are genuine they are very significant as they show the Appellant faces a life sentence in Egypt's notorious prisons. However, I cannot give these documents full weight because I have only seen soft copies and I have not been able properly to authenticate them.
>
> 121. The best and often the only way to authenticate official Egyptian legal documents like these is to check with the issuing bodies in Egypt whether or not they are genuine. Only an Egyptian lawyer has any chance of being able to do this arduous task.
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> 122. If a foreigner like myself tried to pull state records in Egypt I would be stopped by security officers. The Egyptian authorities would regard such an act as suspicious or hostile. I would likely be arrested, detained and deported. State media frequently warns the public about the threat of foreign espionage. I have journalist colleagues and friends who have been deported from Egypt in the past or barred entry.
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> 123. Even for an Egyptian lawyer retrieving public records is not safe. Lawyers working on human rights cases have frequently found themselves being arrested and detained themselves, assumed guilty by association.
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> 124. At least sixteen lawyers are reported to have been arrested since September 2019. Among those recently arrested and tortured by the regime is activist and writer Alaa Abd El Fattah. When his lawyer, Mohamed al-Baqer, who is also head of the Adalah Center for Rights and Freedoms, came to help him, he was also arrested and detained.
> 125. In this case I was instructed the Appellant was strongly against the idea of a lawyer in Egypt attending a court in Egypt to check his documents because he feared for the safety of his family in Egypt. This is a reasonable fear to have. The regime in Egypt is dangerous and generally best avoided. If a lawyer did try and check the Appellant's documents it is possible that this could raise alarm bells with the authorities leading to the persecution of the lawyer and / or other people involved in the case who are currently in Egypt

(including me) or someone else close to the Appellant such as his friends or relatives. The regime often targets people's families in lieu of the person they really want.

126. The documents indicate the Appellant did not attend the trial against him and so was tried in absentia. The Home Office refusal letter notes in paragraph 33 that in Egypt in a trial if a defendant fails to appear and is subsequently sentenced in absentia they get a retrial. This is consistent with what I know about the Egyptian legal system. However it is important not to put too much weight on Egyptian law because the regime usually does not observe it. The law is simply a tool for targeting the opposition.

127. The Home Office refusal letter paragraph 34 quotes the Egypt justice.com website as saying that the Egyptian constitution states an accused person is presumed innocent until proven guilty in a fair legal trial in which the right to defend himself is guaranteed. These are fine words but they have nothing to do with what actually happens in Egypt's military dictatorship.

128. If the Appellant has been framed by the regime and sentenced to 25 years imprisonment and EGP 70,000 fine for violent crime and involvement with the Muslim Brotherhood then in reality he is not going to get a fair and legal retrial on return. Instead he will probably be tortured and could end up being executed. If these documents are genuine, even though in theory he is entitled to another trial because he was tried in absentia in reality someone who has been charged with political crimes and suspected of involvement with the Muslim Brotherhood has good reason to fear for their life upon return to Egypt.

37. For these reasons, Mr Miles is unable of offer an unequivocal endorsement of the documents. He is however able to say that they are *prima facie* genuine, and that they accord with what he knows about the Egyptian justice system.

38. Drawing these strands of the expert evidence together in the context of this appeal it seems to me that it is unnecessary for me to in fact make a finding on the authenticity of the court documents. That is because the Appellant has already demonstrated, to the lower standard of proof applicable in protection matters, that he does face a real risk of serious harm should he be returned to Egypt.

39. It is not in issue that the Appellant is genuinely opposed to the regime in Egypt. He has recently been involved in anti-Sisi protests in this country. Good quality colour photographs and 'screenshots' show him on such demonstrations in

Manchester, and clips thereof reproduced on the al Jazeera YouTube channel in August 2020. I accept the evidence given by Mr Miles to the effect that the Egyptian authorities maintain a keen interest in monitoring political opposition in the diaspora, and that there is a particular enmity between the Egyptian government and al Jazeera. Mr McVeety acknowledged that Mr Miles' evidence on this point was thoroughly researched and sourced. I am therefore compelled to allow the appeal by the following factors:

a) A core protected characteristic of the Appellant is that he is vehemently opposed to the Sisi government, and that he seeks to express that political opposition through speaking out, highlighting abuses, attending protests etc. He cannot be expected to desist from those activities in order to remain safe. The country background evidence indicates that those who openly challenge the government risk arrest, prosecution and/or detention and ill treatment;

b) He has, over a number of years, risked coming to the adverse attention of the Egyptian authorities by posting opposition content online and having regard to Mr Miles' evidence I find that it is reasonably likely that such material has come to the attention of the Egyptian authorities who make a point of monitoring such material;

c) The risk arising from (b) above is exacerbated by the fact that material produced by, or involving, the Appellant, has been picked up and reproduced by al Jazeera, with whom the Egyptian government has a particularly toxic relationship.

40. On those bare facts the Appellant has made out his claim. As Mr McVeety acknowledged, even taking into account the preserved negative findings made by the First-tier Tribunal (see my §14 above), and even absent positive verification of the Egyptian documents, this is a claim that succeeds.

Decisions

41. The determination of the First-tier Tribunal is flawed for error of law such that it must be set aside.

42. I remake the decision in the appeal by allowing the appeal on protection and human rights grounds.

43. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order 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"

Upper Tribunal Judge Bruce
7th July 2021