



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000360

First-tier Tribunal No: PA/51977/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 23 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**MKAAA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr D Adebayo of A2 Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**Heard by remote video at Field House on 3 May 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant, a citizen of Egypt who came to the UK in May 2019 on a visit visa and overstayed, sought international protection on 28.4.20, on grounds of a well-founded fear of persecution by the Egyptian authorities, claiming to have been

convicted and sentenced to imprisonment for membership of the Muslim Brotherhood (MB), a proscribed organisation, and for possession of a firearm.

2. The appellant appealed to the First-tier Tribunal against the respondent's decision of 15.4.21 refusing his international protection and human rights claims. In dismissing the appeal, the First-tier Tribunal concluded that the appellant failed to prove the factual basis of his claim to the lower standard of proof and made several adverse credibility findings covering almost the entirety of his account. At [47] of the decision, the judge found no reliable evidence that the appellant had ever been arrested and accused of MB membership, or that he had been convicted and sentenced to 5 years imprisonment, as claimed.
3. The appellant sought permission to appeal to the Upper Tribunal. In summary, the grounds asserted that the First-tier Tribunal (i) failed to take all evidence into account; (ii) erred in finding the Egyptian judgement documentation not reliable; (iii) and erred in making adverse credibility findings.
4. Mr Adebayo confirmed to me that the evidence the grounds refer to comprises purported email correspondence between the appellant's UK and Egyptian legal representatives, which it is alleged was uploaded on the CCD platform on the morning of the First-tier Tribunal appeal hearing on 24.5.22. The First-tier Tribunal appeal hearing took place by remote video on 24.5.22. It is relevant to note that although the hearing took place on 24.5.22, the decision was not drafted until 3.11.22 and promulgated the on the same date. There is no explanation for this delay but it is not a ground of appeal. It is asserted, however, that the judge had ample time to consider all the material on the Portal and his failure to do so amounted to an error of law and undermined the adverse credibility findings. Mr Adebayo also confirmed that the Egyptian legal representative only took over the case in 2020 and had no involvement in the events of 2015, at which time a different lawyer was involved. There is no evidence from that previous lawyer, as Mr Adebayo accepted.
5. Whilst at [11] and again at [34] of the decision the judge stated that all evidence had been taken into account, the grounds complain that between [35] and [40] the judge referred to there being no sensible or other explanation for the absence of evidence supporting the alleged conviction in 2015 and subsequent appeals or any "evidence from his solicitor," the judge considering that such evidence could reasonably have been obtained and produced. At [37] the judge set out several detailed concerns about the documentation before the Tribunal, including that neither of the arrest warrants referred to the 2015 conviction or that 2020 was the conclusion of a failed appeal from the 2015 conviction. These concerns served to undermine the reliability of the appellant's factual claim when considered together with the matter set out at [38] of the decision: the failure to mention being detained previously and the three differing reasons he provided for being sentenced to a term of imprisonment. It is asserted that the evidence to answer the judge's concerns was before the Tribunal before the decision was drafted and promulgated.
6. On 15.3.23, the Upper Tribunal granted permission to appeal against the decision of the First-tier Tribunal (Judge Khawar) dismissing the appellant's appeal. In granting permission, Upper Tribunal Judge Perkins considered the first ground arguable: namely, that the judge ignored pertinent evidence alleged provided on the morning of the First-tier Tribunal appeal hearing so that it is arguable that the hearing was procedurally unfair. It was not clear to Judge Perkins whether the documents, filed very late, were drawn to the judge's attention after being uploaded to the case file, but "*the appellant's solicitors will*

*be expected to explain in detail how the documents came to be loaded to the file and what the Judge and the respondent were told about them."*

7. Frankly, little clarity has been provided; Mr Adebayo was not able to provide much assistance. The supplementary bundle of evidence referred to in the grounds includes, at pps 4-17, what is purported to be email correspondence between the appellant's UK solicitor and his Egyptian lawyer. As a preliminary observation, I find this material is in the most unsatisfactory format. For example, it is not clear if the email responses to Mr Adebayo's queries made in March 2022 have been translated as there is no certificate from the translator, neither is there any date on the responses. If translated, the translation is very poorly done so that I cannot be satisfied that it is accurate or reliable. I also note that the email address of the Egyptian lawyer is given differently at different places in the documentation. Mr Tan pointed out that this lawyer was a different person to that involved in 2015 and could only refer to documents that were considered by the First-tier Tribunal at [37] of the decision.
8. Whatever its reliability, it is clear that this 'new' information from the second Egyptian lawyer was not produced at the First-tier Tribunal appeal hearing or even referred to by the appellant's representative, Mr Adebayo, to whose email of 17.3.22 the information from the Egyptian lawyer is supposed to be in reply. It is also not clear when the information provided in response was received.
9. According to what is set out at [36] of the decision, the absence of evidence to establish the 2015 conviction was specifically raised during the appeal hearing in the respondent's representative's (Mr M Iqbal) cross-examination of the appellant, it being suggested that at the very least he could have obtained a statement or declaration from his solicitor to confirm the 2015 conviction. Mr Adebayo accepts that there never was any such evidence relating to 2015, only from the second lawyer who was engaged in 2020. It follows that the judge was entitled to observe and comment on the absence of evidence relating to 2015.
10. If the evidence from the Egyptian lawyer referred to above was in the possession of Mr Adebayo, there is no evidence that it was drawn to the Tribunal's attention. Mr Adebayo says he can't recall now but "believes" that he would have mentioned it to the judge. I cannot accept evidence from Mr Adebayo as a witness but even if I did, he is unable to confirm that it was drawn to the judge's attention and can now only speculate. It is also clear that the respondent's representative was unaware of any such evidence, otherwise the questioning of the appellant would likely have been different. There is no evidence that the evidence in question was ever served on the respondent at or before the appeal hearing. More significantly, neither was there any application made at the outset or even during hearing to admit late evidence.
11. Examination of the Portal reveals that the 'Appellant's Supplementary Bundle' was uploaded at 09:17 AM on 24.5.22, the day of the hearing, with the added comment: *"This is the appellant's supplementary bundle. We apologise for lodging it late and regret any inconvenience caused."* Significantly, it was not accompanied by any written application to extend time to admit the evidence with reasons for failure to provide it within the timetable set by the Tribunal, as would have been required. I drew Mr Adebayo's attention to the notices sent out reminding the appellant's representatives that if further time to serve the appellant's evidence was required, *"an application must be lodged via the relevant tab on My HMCTS with full explanation and reasons."* I note from the case history that the appellant's representatives repeatedly failed to comply with the time limits set by directions for submission of the appellant's bundle and skeleton argument. The appellant cannot simply upload material at any time in

breach of the Tribunal's directions and expect it to be admitted and considered without even a mention to the judge or an application to admit it.

12. In all the circumstances, I am satisfied that the First-tier Tribunal was not required and indeed not permitted to take into account any evidence in respect of which permission for its admission had not been granted. I am not satisfied that the material was ever drawn to the Tribunal's attention. It was certainly not sufficient to merely upload the evidence and say nothing about it to the judge or the respondent's representative.
13. It follows from the above that I am satisfied that there was no procedural unfairness in the judge not taking any such material into account when making the decision in the appeal. Even if the material had been taken into account, I am satisfied for the reasons set out above that it was so inherently poor in quality and unreliable that it could not have made any material difference to the adverse credibility findings and the outcome of the appeal. It was entirely within the judge's province to reach the conclusion that the unsatisfactory documentary evidence that the judge referred to within the decision could not be relied on, pursuant to Tanveer Ahmed principles. Cogent reasons for that conclusion were provided. I cannot see that the documentation now relied on, the material from the Egyptian solicitor, could or would have made any material difference.
14. In the circumstances and for the reasons outlined, I am satisfied that no material error of law has been identified by any of the grounds.

### **Notice of Decision**

The making of the decision in the appeal did not involve an error of law.

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

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**3 May 2023**