



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

Appeal Number: PA/09759/2017

THE IMMIGRATION ACTS

Heard at Bradford

On 4 April 2018

**Decision & Reasons
Promulgated
On 17 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Pickering, instructed by Parker Rhodes Hickmotts, Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, MD, is a male citizen of Sudan who was born in 1991. He appealed against the decision of the respondent dated 22 September 2017 to refuse his fresh claim for asylum. An earlier refusal of asylum had been the subject of an appeal which was dismissed in 2011. The appellant's appeal against the decision of September 2017 was dismissed by the First-tier Tribunal (Judge Hands) in a decision which is dated 27 December 2017. The appellant now appeals, with permission granted in respect of grounds 1 and 3 only, to the Upper Tribunal.

2. In summary, grounds 1 and 3 are as follows. First, there was medical evidence relating to scarring on the appellant's body. At [36], the judge wrote:

"The doctor was only able to attribute some of the scars had been consistent with the cause attributed to them which means those scars could have been caused by the trauma described but it is non-specific and there are many other probable causes. This conclusion is too wide to enable me to depart from the findings of Judge Gordon [who heard the first appeal in the First-tier Tribunal] and in my judgment, the contents of the report are insufficient to establish, even to the very low burden of proof required, that the appellant was beaten whilst being detained by the Sudanese authorities."

3. In his medical report at [55], Dr Moulson wrote:

"On physical examination I found two scars that were characteristic of major abdominal surgery. In addition there were three marks that I considered typical of whipping injuries. Four other lesions were consistent with their attribution. Seven lesions were of uncertain attribution and a further five were definitely not attributed to torture."

4. Ms Pickering submitted that the judge had mis-described the outcome of the doctor's physical examination of the appellant. The judge appeared to have regarded all the various lesions on the appellant's torso as being "consistent" only. By reference to the Istanbul Protocol, *typical scars* have "an appearance that is usually found with this type of trauma but there are other possible causes." Scars which are *consistent* with an account "could have been caused by the trauma described but it is non-specific and then many other possible causes."
5. On the face of the decision, the judge appears to have categorised all the scars as consistent and has not specifically referred to the "typical" scars. The question is whether the judge has erred in law and, if she has done so, whether her error is material to the outcome of the appeal. It must be remembered that the judge has concluded at [39] that the medical report had not moved the judge from her overall finding, drawn from all the available evidence including the medical report, that the appellant had not been beaten whilst detained. Given that the judge has, quite properly, considered the medical report as part of the overall relevant evidence in this case, I do not consider that the judge would, in the light of her other findings on the appellant's account and the findings of the previous Tribunal, have concluded that scars which may have been "*typical*" of whipping would have enabled the appellant to cross the low threshold of reasonable likelihood. In essence, the difference between "*typical*" and "*consistent*" scarring is that both types scars could have been caused as described by an appellant whilst a "consistent" scar might have "many other possible causes" a "typical" scar has an appearance that is usually found with the type of injury described yet may have 'other causes'; the main difference is in the number of possible other causes. Given her very detailed findings in respect of other aspects of the appellant's account and her legitimate reliance also on Judge Gordon's earlier findings, I do not find that any oversight or error by the judge in respect of the medical evidence

is likely to have changed the outcome of the appeal. Had the judge overlooked a “diagnostic scar”, that may have been a different matter. In such a case, other causes would have been excluded. Given the judge’s findings on the remainder of the evidence, whether there were “*many* other causes” or simply some other possible causes for the injuries described makes no difference to the outcome of the appeal.

6. Ground 3 concerns an alleged failure by the judge to consider the evidence. There is a letter from a Sudanese political opposition organisation (JEM) which the judge considered at [46]:

“The biggest issue in respect of the information contained in the letter of JEM is that the organisation has confirmed [the appellant’s] attendance at a demonstration when in fact the appellant was in detention and could not possibly have been at that demonstration. This places all the evidence in the remainder of that letter to be found at page E4 of the respondent’s bundle in doubt and renders it unreliable.”

7. The appellant asserts that the judge either failed to consider or does not record having considered a correcting letter from JEM in London which sought to reconcile the anomaly in the earlier letter.
8. I find that the ground has no merit. First, I am satisfied the judge has considered all the evidence in what is a thorough and detailed decision. Secondly, even if the judge has overlooked the correcting letter, any error is not material. At [47] and [49] the judge considers the appellant’s *sur place* activities in the United Kingdom “at the highest” and on the basis [49] that they had been “brought to the attention of the Sudanese authorities”. In other words, even if the judge has overlooked the apparent anomaly which she describes at [46] and she were to accept the JEM evidence of the appellant’s attendance at demonstrations in the United Kingdom, she did not, applying the relevant country guidance, conclude that the appellant would face a real risk on account of those *sur place* activities. In the light of that alternative finding, the judge’s view of the correcting letter from JEM or her overlooking of the letter is not relevant.
9. This appeal is dismissed.

Notice of Decision

The appeal is dismissed.

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 12 April 2018

Upper Tribunal Judge Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 12 April 2018

Upper Tribunal Judge Lane