



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002454
First-tier Tribunal No:
RP/50015/2021
IA/02428/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KMA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn instructed by Citizens Advice Bradford & Airedale and Bradford Law Centre

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 20 February 2023

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Hands ('the Judge'), promulgated following a hearing at Newcastle on 27 August 2021, in which the Judge dismissed the appellant's appeal against the refusal of his further submissions.
- 2.** The appellant is a citizen of Sudan born on 21 December 1985. The Judge noted he left Sudan on 10 November 2013 and travelled to Libya where he worked until July 2015. The appellant then travelled through Italy and France before entering the United Kingdom where he claimed asylum. That application was refused and the appellant's appeal against that decision dismissed. The appellant became 'appeal rights exhausted' on 6 January 2017. Further submissions made in the interim were refused. Those giving rise to these proceedings were made on 23 January 2020 and refused on 1 February 2021.
- 3.** The Judge noted that the agreed issues to be determined were (a) whether the appellant is a member of the Tunjur tribe, (b) whether the appellant came to the

attention of the authorities in the manner described, and (c) whether the appellant is at risk on return from the authorities in Sudan.

4. The Judge notes at [8] an additional issue raised by the respondent as to whether the appellant would be unable or unwilling to access medical treatment in Sudan and how that would affect his ability to establish himself and his private life in Sudan.
5. The grounds seeking permission to appeal assert the Judge's assessment of the medical evidence and findings on credibility are flawed for the reasons set out in greater detail in the pleadings dated 23 September 2021.
6. Permission to appeal was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Reeds on 2 December 2022, the operative part of the grant being in the following terms:
 1. The grounds challenge the assessment of the medical evidence provided in a medico-legal report from Dr Hoe. Having considered the grounds, it is arguable that the FtTJ erred in the assessment of the report for the reasons set out. Firstly, by failing to attribute weight to the conclusions applying the Istanbul Protocol, that the physical evidence of scarring was highly corroborative of his account of ill-treatment in Sudan rather than Libya (see [185]) taken with the psychological assessment and diagnosis of PTSD. The grounds identified paragraph [25] of the FtTJ's decision. It is arguable that the FtTJ did not take account of the Dr's assessment that there was no evidence of fabrication. It is also arguable that the FtTJ fails to give any or any adequate reasons as to why she found the injuries were as a result of events in Libya when the medical evidence identified deliberate infliction of cigarette burns (at para 173) along with other scarring.
 2. It is further arguable that the FtTJ did not take account of his vulnerability as a witness in reaching her findings as to the differences in his factual account. As the grounds contends, it is arguable that the report did assess formally that his memory of events had been affected by his experiences (see paragraphs 197 onwards).
7. The grant of permission to appeal refers to a letter from a Dr Bonnet dated 25 November 2021 which was not considered by Judge Reeds as it was not evidence available to the Judge and there was no application pursuant rule 15(2A) of the Upper Tribunal Procedure rules to admit such evidence.
8. At the outset of the hearing Ms Cleghorn made a formal application pursuant to rule 15(2A) to admit the letter. The application was opposed by Mr McVeety if the purpose of the application was to adduce the correspondence in support of the finding of material legal error as opposed to it being additional evidence that the Tribunal could take into account if legal error was found.
9. The letter is dated 25 November 2021 and therefore did not even exist at the date the Judge made her decision. It is also clear from the text of the letter, written by Dr Bonnet who is described as a Lead Doctor with Freedom from Torture, that the purpose of the letter is to provide a critique and comment upon some of the findings made by the Judge. It is therefore not a medico-legal report of the type that ordinarily would be seen by the Tribunal. This was highlighted by Mr McVeety by reference to [6] of the report in which is written "*Contributory causes to the PTSD have been discussed but her opinion is that they are not the sole issue. In disputing this in preferring an alternative course, the decision maker has made a clinical judgement*". The credibility of the claim was a matter for the Judge.

- 10.** As advised orally at the hearing, I do not find it appropriate to admit this letter for the purposes of establishing whether the Judge erred in law in a manner material to the decision to dismiss the appeal. I admitted the letter pursuant to rule 15(2A) of the Procedure Rules but only in the context that if material legal error is found it will form part of the appellant's evidence to be considered at any further hearing.

Discussion

- 11.** The Judge noted an earlier determination which dismissed the appellant's previous asylum appeal. That document was promulgated on 22 December 2016 in which First-tier Tribunal Judge Myers ('Judge Myers') was considering the appellant's appeal against the refusal of the asylum claim made on 15 October 2015.
- 12.** Judge Meyers set out details of the appellant's claim between [7 - 13] of that decision in the following terms:
7. The details of the Appellant's claim may be found in his statement dated 25/11/2016, and the record of the substantive asylum interview. The Appellant also gave oral evidence. Putting all of that together the Appellant's account may be summarised as follows.
 8. He originates from Khartoum and is a member of the Tunjour tribe. He did not encounter any problems living in Khartoum until 2013.
 9. On 27/09/2013 he was returning from visiting his brother in law when he got caught up in the aftermath of an anti-government demonstration which was taking place in Laffa market. He was arrested and detained for one month.
 10. During his detention, he was beaten and ill treated. He eventually falsely confessed to being a member of the Justice and Equality Movement (JEM) and was released on the condition that he reported to the police and acted as an informer.
 11. On his release he arranged his escape from Sudan. He left Sudan on 10/11/2013 and went firstly to Libya where he worked until 02/07/2015 to earn the money for his onward journey. He then travelled to the UK via Italy and France. He did not claim asylum in these countries because they did not treat asylum seekers well.
 12. Since entering the UK, he has taken part in demonstrations against the Sudanese regime.
 13. He is in fear for his life if he is returned because the Sudanese authorities regard him as associated with the Darfuri rebel movement.
- 13.** Ms Cleghorn opened her submissions by stating that Judge Myers made very few actual findings in that determination and that the documentary evidence provided by the appellant before Judge Hands dealt with the issues of concern to Judge Myers.
- 14.** Judge Myers' findings are set out from [19] of that decision and can be summarised as follows: that the appellant's account of the circumstances of his arrest in 2013 lack credibility [20], the appellant's account of his detention and ill-treatment was vague and lacking in detail with no evidence such as medical evidence in support of his ill treatment [21], that the appellant's credibility is

severely damaged by his action of taking a crib sheet with information about the Tunjour tribe to his asylum interview. Judge Myers found the appellant's explanation for taking the crib sheet "wholly unsatisfactory", and although the appellant claimed before Judge Myers that he did not read from the crib sheet Judge Myers noted it being recorded in the asylum interview record at question 101 that the interviewing officer noted the appellant had a piece of paper under the table which he was reading from. Judge Myers found that if the appellant was genuinely a member of the Tunjour tribe he would have been able to answer the questions about their customs despite being nervous at interview [22], that little weight can be placed upon the two letters submitted from Dr Osman of the Berti and Tunjour communities in the UK and from the Union of the People of Darfur in UK and Northern Island as neither author of the letters attended the hearing to have their evidence tested in cross-examination and it was unclear when they met the appellant, what questions were asked, what investigations were conducted. It was also noted that it was not known whether either of the authors of the letters were aware of the reasons for the refusal and the appellant having been found using a crib sheet at his asylum interview [23], that little weight was placed upon photographs purporting to show the appellant attending a demonstration in front of the Sudanese embassy as the originals had not been provided and it was possible they were computer-generated or altered and , in any event, the copies were very unclear, making it difficult to identify the appellant, and the appellant had not explained why he decided to participate in demonstrations in the UK as he did not take part in demonstrations in Sudan [24]. Judge Myers found that the appellant had fabricated his claim and that the failure to claim asylum in France and Italy damaged his credibility [25] and that the appellant's claim for humanitarian protection and Article 3 ECHR fell in line with the adverse credibility findings.

15. The assertion in the grounds that neither judge had made clear findings in the appeal is therefore incorrect.
16. Judge Hands was correct to take as her starting point, in accordance with the Devaseelan principles, the findings of Judge Myers.
17. In Secretary of State for the Home Department v BK (Afghanistan) [2019] EWCA Civ 1358 the Court of Appeal considered the Devaseelan principles again explaining the cases and stressing the importance of not allowing the guidance to place unacceptable restrictions on the second judge's ability to determine the appeal in front of them. The Court found that a matter of practice the judge must address their mind to the reasons put forward by the party who is seeking to depart from the previous findings as to why that finding is so unreliable that it should not in effect be carried forward into the determination of the appeal now before it. It was found in addressing the question of whether the finding of fact could be carried forward in that way that the second tribunal could not be restricted to material postdating the first tribunal decision which was not relevant to the decision.
18. Ground 1 at [4] makes specific reference to the finding of the Judge at [25] and again at [38].
19. The Judge's findings actually commence from [9]. The Judge considers the issues in the order they have been set out above, the first relating to whether the appellant is a member of the Tunjur tribe from [13]. In that paragraph the Judge writes:
 13. The reasons for refusal notice refers to the various discrepancies between the account given to Dr Hoe and the various accounts provided to the Tribunal. Whilst problems with his memory have been referred to by the Appellant and mentioned by Dr Hoe, there is no formal finding that the Appellant's memory of events has

been affected by his experiences, be they true or false. I found the Appellants to have a good memory of events as he gave clear answers and dates to the events he has referred to in his claim for protection. He also clearly described his time in Egypt and recalled his movements before he claims he was detained in Sudan. I do not find any issues the Appellant has with his memory would explain the omissions or additions to his various accounts in respect of his claim be they to his solicitor, any interviewing officers, the Tribunal or the medical professionals, including Dr Hoe, that he has spoken to.

20. The Judge is criticised at [6 -7] of the grounds seeking permission to appeal in the following terms:

6. In addition, there is a fundamental issue in this Appellant's case in that at no point, does he appear to have been considered a vulnerable witness with the corresponding protections. It is submitted that the FTJ to make findings that the injuries are just as likely to have been caused in Libya was that because he has a good memory with respect of certain things, i.e. certain events or dates of events [13] fails to take into account what the effects of trauma actually are. So, for example, he explained to the Dr. that he experienced memories '*as if it was real*'. These are recognised by the WHO as 'flashbacks' while at the same time, his 'concentration and memory are much reduced'. As such, it is submitted that it is explicable why he has clear memories of some things and not necessarily of others. It is implicit within Dr Hoe conclusions that she considered the Appellant to be telling the truth thus, she did not consider the injuries to have been caused in Libya.
7. It is also submitted that FTJ was wrong in finding that Dr Hoe did not make a formal finding that his memory of events has been affected by his experiences. Paragraph 197 of the report states that '*the DSM-IV definition of PTSD relies heavily on the presence of memory disturbances in relation to the trauma, such as intrusive memories, nightmare and the inability to recall important aspects of the trauma..... The inability to recall precise detail supports, rather than discounts, rather than discounts the credibility of the survivor's story*'. Thus, it is submitted, that FTJ Hands is demonstrated be wrong in finding the Appellant to have a good memory for events and that no issues with his memory would explain the omissions or additions to his various accounts and that this somehow militates against his credibility.

21. The above paragraphs raise a number of issues. The Judge does consider the appellant's medical history and specifically the submissions that were made in relation to problems with the appellant's memory that he referred to himself and which are mentioned by Dr Hoe. It is of note that in setting out the agreed issues the Judge does not record that she was asked by the appellants representative to treat him as a vulnerable witness or asked to make any adjustments to the way in which the hearing was conducted to accommodate the appellant. The appellant was represented before the Judge by Miss Weatherall, an extremely experienced barrister with a call year of 1985 with what is described in her biography for

Cathedral Chambers as having vast experience specialising in the field of asylum and immigration law for many years.

22. Dr Hoe's medical report, written following instructions to Freedom from Torture, lists the documents provided by Bradford CAB and Law Centre as being the appellant's screening interview of 18 October 2015, Statement of Evidence Form of 10 March 2016, Reasons for Refusal Letter of 21 March 2016, witness statements 14 January 2019 and 25 November 2016, further submissions of 29 June 2018, and the medical records of 21 October 2015 and 6 November 2018, but does not mention Judge Meyer's determination or knowledge of the adverse findings made therein. The report also refers to 3 sessions with the appellant in May and June 2019.
23. The account given by the appellant to Dr Hoe was of his alleged detention in the circumstances considered by Judge Myers, for which the appellant claimed he had bruises and cuts and also had cigarettes put out on his skin. Dr Hoe records the appellant recounting his journey through Libya, his being detained by a militia group and receiving some injuries which caused some bruising, and after release working on a farm in Libya.
24. Dr Hoe sets out the interpretation of the physical evidence and the scars from [172] of the report and the psychological evidence from [186] in which it is stated the appellant meets the criteria for PTSD. It is also stated that he meets the criteria for depression at [191]. In relation to memory problems Dr Hoe writes:
 196. I have read the accounts KMA has given in his screening interview, Substantive Interview on Witness Statement and notes some differences. There are a number of clinical reasons that may account for these differences in account.
 197. *"The DSM-IV definition of PTSD relies heavily on the presence of memory disturbances in relation to the trauma, such as intrusive memories, nightmares and the inability to recall important aspects of the trauma. The individual may be unable to recall with precision specific details of the torture events will be able to recall the major themes of the torture experiences. For example, the victim may be able to recall being raped on several occasions but not able to give the exact dates, locations and details of the setting or the perpetrators. Under such circumstances, the inability to recall precise details supports, rather than discounts, the credibility of a survivor's story. Major themes in the story will be consistent upon re-interviewing."* Paragraph 253 of the Istanbul Protocol
 198. KMA reports multiple episodes of head injury which is well known to have a lasting effect on memory. Even minor brain injury has been shown to have long-term effects on cognition and memory.
 199. A diagnosis of moderate depression is likely to have a significant impact on KMA attention and concentration such that he may have difficulty following the course of a seemingly routine conversation.
 200. KMA reports significant anxiety along with lack of sleep prior to the SEF interview which may have had an impact on his memory and recall. In these situations it is common for those with poor memory to write down details to aid their recall.
 201. During our sessions KMA has disclosed additional details to me compared with his Home Office interviews. This is to be expected given that I spent a total of nine hours over three sessions with KMA in a safe clinical environment.

'It is our experience that because doctors take their histories in a way quite differently from lawyers or government officials, and because of the setting of the doctor's examination room compared to, the lawyers busy office for an interview room at the Home Office. A more detailed disclosure often results. Disclosure is sometimes significantly enhanced merely by the fact that the questions are put by a doctor, especially, we believe if the doctor has had a level of specialist training on interviewing survivors of torture and has gained experience from other interviews of the immediate and long-term impact of torture'.

25. Dr Hoe does consider whether the appellant has fabricated this claim rights at [204 - 206]:

204. I have considered the requirements of paragraph 105 and 287 of the Istanbul Protocol as to whether there is evidence of a false allegation of torture. I have not found any evidence of embellishment or fabrication of clinical signs or symptoms. KMA differentiates between scars from previous injuries and scars from his detention and did not seek to attribute lesions from his time in detention when this was not the case.

205. I have also considered whether there has been any fabrication of psychological symptoms but there is no evidence to suggest this. My objective evidence is that KMA showed emotion congruent with the subject matter, in particular whilst recounting his detention and the ongoing effects from this.

206. KMA observed reactions, through the three interviews, showed signs of distress at appropriate points in the narrative, many of them subtle. To falsify such reactions requires a high degree of acting skill rarely possessed by lay people.

26. In *SS (Sri Lanka) v Secretary of State for the Home Department* [2012] EWCA Civ 155 the Court of Appeal found that the weight to be given to the medical evidence was a matter for the judge so long as it was considered carefully, and reasons were give.

27. The assertion the discrepancies could be explained in a medical context did not, arguably, prevent the Judge carrying out the necessary fact finding exercise in relation to such issues. Although Dr Hoe suggests these may have arisen as a result of further disclosure to her by the appellant in the clinical setting that does not explain the concerns in the appellant's evidence identified by Judge Myers. At [20 - 22] Judge Myers wrote:

20. His account of the circumstances of his arrest in 2013 lacks credibility. He stated that he was returning to his home, visiting his brother-in-law and had hired a tuk-tuk (scooter taxi). The police were dispersing a demonstration in the market and he got off the tuk-tuk there even though it was not where he lived. He has failed to give a credible explanation why he chose to leave the tuk-tuk at a place which was not near his intended destination and where there are obvious dangers.

21. His account of his detention and treatment is vague and lacking in detail. He claims to have suffered ill treatment during his detention but has not submitted any evidence in support such as a medical report.

22. I find that his credibility is severely damaged by his action of taking a crib sheet with information about the Tunjour tribe to his

asylum interview. In my judgement, his explanation for this is wholly unsatisfactory. He says that he took the crib sheet with him because he was nervous and stressed and worried that he would forget something because his representative had told him that it was likely he would be asked questions about tribal customs. He said in oral evidence that you did not read from the sheet at the interview. However, it is recorded in the asylum interview record at question 101 that the Interviewing officer noted that the Appellant had a paper sheet under the table I find that if he was genuinely a member of the Tunjour tribe you would have been able to answer questions about the customs despite being nervous at the interview.

28. In the Reasons for Refusal decision it is written:

When assessing you, there were numerous documents that Dr. Hoe has not considered including your Appeal Determination and the findings within that from the Immigration Judge (IJ) and the most recent Witness Statement you have provided.

There were numerous omissions in your Witness Statement that you had provided in your account to Dr. Hoe regarding how you were obtained by the Sudanese authorities, what injuries you had received while you were detained such as cigarette burns and being whipped.

Despite having previously claimed that you have conducted sur place political activity while in the United Kingdom, you did not state this to Dr. Hoe and had said you were not political.

While the medical report states that the injuries you have received are consistent with, highly consistent with and typical of the injuries you described you received in your account, none of the injuries you have provided were diagnostic of the account you have provided meaning that for your injuries there are other possibilities. So while some weight is placed on the medico-legal report provided, it does not definitively establish your account had occurred.

While the report concludes you meet the diagnostic criteria for PTSD, this is not a formal diagnosis. While your memory may be impaired as a result of the physical and mental trauma you had experienced, this does not explain multiple of the credibility issues that had been raised by the IJ - including why you had gone to the scene of a dangerous protest, why you weren't transparent about your problems with your memory when bringing in a crib sheet at the beginning of the process, your claim to have conducted sur place activity whilst in the United Kingdom or your failure to claim asylum while you were in France and Italy.

While weight is put on the expert report, you have still failed to provide further evidence that you are of interest to the Sudanese authorities or that you are subject to any of the risk factors identified in paragraph 2.4.10 of the Home Office's country guidance, having not participated in political activities at all, having never previously been of interest to the Sudanese authorities and having not provided any evidence that you are of interest to the Sudanese authorities at all.

It is therefore not accepted for the reasons above that you would be at risk of persecution on return to Sudan on the basis of your political opinion.

- 29.** As noted, at [13] the Judge refers to this section of the refusal notice and to her own experiences of the appellant's memory and ability to recollect events. Whilst Dr Hoe seeks to provide an explanation for some of the issues of concern that explanation is properly considered by the Judge but not found to be persuasive
- 30.** The Judge specifically records at [18]:
18. As his memory is the only issue that comes into play about his ethnicity, I do not find the Freedom from Torture report provides fresh evidence in respect of the Appellant's tribal ethnicity and I do not depart from the findings of Judge Myers in 2016 in respect of his ethnicity. I find the Appellant has not established he is a member of the Tunjor tribe.
- 31.** The grounds failed to establish that this is a finding outside the range of those reasonably available to the Judge on the evidence. Between [19] the Judge writes:
19. The Appellant has changed his account of how he claims he became caught up in the demonstrations in Khartoum in 2013. He confirmed in his oral evidence that the account provided by Dr Hoe is the true version of events in that he had taken a tuk-tuk from his brother-in-law's home, left it and was walking to find another one to take him home when he was arrested. He has still not explained why he would leave the tuk-tuk at a point that was not his intended destination, that is, his home, and alight in an area where he knew such demonstrations were taking place.
- 32.** It was not satisfactorily explained why the account given by the appellant to Judge Myers was suddenly wrong such that it was necessary for the appellant to change his version of events in relation to the tuk-tuk. This is the appellant referring to an event that happened to him in relation to which he would have claimed that he was telling the truth before Judge Myers. It is more plausible that the reason the appellant has changes account is because Judge Myers indicated that the account given to the tribunal on that occasion was not credible. The Judge notes, in any event, that even the revised version could not credibly explain his actions on that occasion. The Judge was entitled to conclude there was no reason to depart from the findings of Judge Myers on this particular point.
- 33.** At [20] the Judge writes:
20. The Appellant claims that he falsely confessed to being a member of JEM in order to escape from the detention and torture he was suffering. He was able to give an account to his captors of how he acted as a post box for JEM, by receiving packages at his store and passing them on to other members. The Appellant claimed he had no interest in politics and was never politically active in Sudan, and yet, for his account to be true, he would have had knowledge of JEM and the methods by which they communicated. I realise that in saying this, it would suggest the Appellant has lied about not being politically active but, in my judgement, what it suggests is that the Appellant has taken time to investigate JEM and the way it operated, so that he could provide just such an account to the Respondent by way of an explanation as to why he had to leave the Sudan as it would mean he was known to the authorities and had previously come to their attention.
- 34.** This is not a finding based upon any issue undermined by the grounds or medical report. Having assessed the evidence of the harm it is not made out this is a

findings outside the range of those reasonably available to the Judge who had the benefit of assessing both the written and oral evidence. The Judge's conclusion that the appellant had investigated JEM so he could provide an account to the respondent is a suggestion arguably supported by the fact the appellant took a crib sheet with him containing details of his alleged tribe which, had he genuinely been a member of that tribe, he would have known. Although Ms Cleghorn in her grounds tries to negate the impact of the appellant taking a crib sheet into the interview with him, the conclusions of both Judge Myers and Judge Hands based upon such action have not been shown to be outside the range of findings reasonably available to either judge. Such an action justifiably cast doubt upon the appellant's credibility in relation to matters of which, if his claim was credible, it is reasonable to assume he would have actual knowledge.

35. At [21] the Judge writes:

21. In earlier statements, the Appellant has spoken of the injuries he suffered in Sudan and the weak state of his body on his release. He claims he went to his uncle following his release. It is not clear if this 'uncle' lived within the family compound he refers to in his interviews with Dr Hoe, or the uncle lived elsewhere or if it is the same uncle that owned the supermarket where he worked. The Appellant made no reference to contacting anyone else in his family or even his wife following his release from detention or even said whether or not they were aware of what had happened. The failure to mention any impact on his family at the time, of what he claims happened to him, lends weight to my reservations about his credibility in respect of events prior to leaving Sudan.

36. In this paragraph the Judge is again referring to the appellant's written evidence in his witness statements which the appellant was relying upon in support of his appeal. It has not been shown to be an irrational finding of the Judge that having been released from detention after having been taken by the authorities the appellants failure to contact immediate family members to reassure them that he was all right and that he had been released was a cause for concern about the truthfulness of the account being given. It is not an issue dependent upon memory or other matters identified by Dr Hoe, but a logical, rational conclusion reached by the Judge on the factual matrix presented by the appellant.

37. In relation to the appellant's journey to the UK the Judge identifies a further issue at [22 - 23] in relation to the appellant's conduct and employment in Libya, in the following terms:

22. The Appellant claimed in his written statement that the journey planned for him by his uncle involved a trip from Omdurman by land cruiser which took him to Libya within a week, where he was to be handed over to another smuggler and taken to Tripoli, where he would contact relatives. However, when given the opportunity to have relatives pay the ransom for his release from his abductors, he chose to be sold to the farmer, with whom he remained until he earned sufficient money to meet the cost of his journey to Europe.

23. The Appellant has stated in his written statement dated 14 January 2019 that he agreed to stay with the farmer in Libya after an initial period of six months as he was to be paid. He did receive payment for his work, albeit he says it was sporadic, but as a result of the payment he received, he was able to secure his journey to Italy on a boat across the Mediterranean Sea. The

Appellant did not want referred to the National Referral Scheme as a victim of modern slavery when that was offered to him, therefore, I am satisfied that it was his decision to remain working with the farmer as he was being paid for this work.

- 38.** The Judge properly considers the medical evidence referring to Dr Hoe's at [25 - 26] in the following terms:
- 25. Dr Hoe's report provides an opinion on the various scars found on the Appellant's body and concludes that his injuries were either consistent or highly consistent with the injuries he described receiving in his account but did not reject the possibility that they could have been sustained in another way. There is no doubt the Appellant has received many injuries over his lifetime, some of which he has attributed to torture at the hands of the Sudanese security forces during a period he was detained on suspicion of being a rebel opposed to the government of the time and others he sustained at other periods of his life.
 - 26. The Appellant has described his ill-treatment in Libya where he remained from 10 November 2013 to 26 July 2015, as he advised in his oral evidence when asked how long he had remained there. During his time in Libya, he described how he worked on a farm, carrying out all manner of farm work from feeding livestock, looking after them and 'carrying out other stuff around the farm' and he sometimes received payment. He also described how after he was caught trying to escape, he was hit and the farmer threatened to kill him if he ran away again. Despite this, he is adamant that his scars were as a result of treatment he received in Sudan.
- 39.** In light of the factual account given by the appellant the Judge was entitled to consider whether the scars had been caused by other means. The question of whether the scarring was caused by ill-treatment in Libya rather than as a result of detention in Sudan was also considered by Dr Hoe.
- 40.** The Istanbul Protocol provides a scale of assessment by the physician, representing the degree of consistency between the scarring and how it is claimed to have been incurred by the patient at paragraph 187. These are:
- a) Not consistent: the lesion could not have been caused by the trauma described;
 - b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;
 - c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;
 - d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;
 - e) Diagnostic of: this appearance could not have been caused in any way other than that described.
- 41.** The Judge does not challenge the diagnosis of the scarring or injuries identified by Dr Hoe but the issue of causation.
- 42.** Having identified the lesions on the appellant Dr Hoe sets out her interpretation of the physical evidence from [172] in the following terms:

172. L7 is highly consistent with trauma from the butt of a gun. The skull has only a thin covering of subcutaneous tissue and muscle to protect it from injury. Blunt injury of a sufficient force to an area such as this would lead to the skin splitting and the resultant scar. The fact that the hair has not regrown indicates a deep injury leading to damage to the hair follicles. A fall to the head would cause such an injury but I would not usually expect the resulting damage from a fall to be so severe. The beatings KMA experienced in Libya could be a cause of the injury. He does not have to put it out rather than leaving it in him at risk of serious head injury. In my opinion and inflicted blow is the more likely cause. It is not possible to determine from the appearance when the blow was inflicted.
173. L8,L9,L11,L12,L13,L14,L15,L18,L21,L22,L28,L29,L34,L35 and L37 are typical of cigarette burns. They are all circular or very nearly circular in shape. Many of them have central hypopigmentation with surrounding hyperpigmentation or a mixture of hyperpigmented and hypopigmented areas which is indicative of the usual variations in temperature of the end of a cigarette. To cause a circular marked a great needs to have contact with the skin in one site. Glancing contact with a cigarette does not leave a circular mark but a more non-specific shape. The sites of the lesions are mainly impositions which would be unusual for deliberate self-harm (such marks are by far commonest on the upper surface of the four arms on the top of the legs). I have considered whether these lesions could be due to accidental burns, for example splashes from hot liquid, but the regular shape, number and diffuse pattern makes this unlikely. Therefore in my opinion the most likely attribution for these marks is deliberate cigarette burns.
174. L16 and L17 are hyper-pigmented lesions without a specific shape that are both attributed to cigarette burns. KMA told me that his captors sometimes moved the cigarette around his skin to put it out rather than leaving it in one place. Two lesions are consistent with burns from cigarette.
175. L23 is consistent with scarring resulting from injury with a blunt object such as a rigid rod. KMA described how he had multiple areas of his body bruised and bleeding during his detention.
176. L30 and L31 are highly consistent with scarring resulting from injury with a blunt object such as a rigid rod. The back is a part of the body well protected by muscles and subcutaneous tissue and significant force will be required to cause injury severe enough to leave scars such as these. It would suggest repeated blows from a blunt object. KMA recalls that this injury was the most severe one he sustained whilst in detention and that the skin took several weeks to heal. The beatings in Libya could be a cause of the injury. A high impact fall onto sharp material (for example rocks) could cause serious injury such as this to the back but this is an usual position for an accidental injury from a fall. In my opinion the attribution given of deliberate but I cannot determine from the appearance when the blows were received.
- 178 L1, L2, L3 and L4, are attributed to injuries from barbed wire.
179. L5 is attributed to an accident from a plastic container.

180. L6 is attributed to an injury whilst in detention and although he cannot give a specific cause, the appearance is in keeping with blunt trauma injuries such as those described.
181. L10 and L19 are attributed to accidental injuries from falling onto stones whilst in Calais.
182. L20, L24, L26, L27, L32 and L38 do not have an explanation but they are in keeping with blunt trauma injuries such as those described.
183. L25 is an injury to the toenail attributed to playing football.
184. L33 is attributed to an accident whilst cooking.
185. Paragraph 188 of the Istanbul Protocol directly to consider the physical findings as a whole. It is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story. Overall I find the physical picture highly corroborative of KMA's account of ill-treatment.
- 43.** I find no merit in the assertion the Judge stepped outside her area of expertise by applying an alternative clinical judgement in relation to causation of the appellant's injuries. There is considerable doubt about whether what the appellant was saying is true as evidenced by the decision of Judge Myers and the findings of the Judge. The appellant claimed that he had been detained and ill-treated in Sudan. Judge Myers found that claim lacked credibility and the Judge gives adequate reasons for why she felt unable to depart from that aspect of the earlier determination in accordance with the Devaseelan principles. That is the finding arrived at having considered all the available material including the reasons for refusal letter and Dr Hoe's medical report.
- 44.** The evidence considered holistically is the foundation for the Judges credibility findings. Credibility is a matter for the Judge not the medical expert. The Judge does not challenge Dr Hoe's qualifications or credentials as an expert witness. Dr Hoe has provided a report into the physical and psychological issues raised by the appellant, or on the appellant's behalf, and assessed the appellant's account of the causation of such injuries. As noted in the refusal letter, and above, it does not appear that Dr Hoe had available all the written material relevant to this appeal. The Judge did. It is clear from Dr Hoe's report that there are a number of alternative explanations for the appellant's physical presentation. Even if injuries, such as the cigarette burns, have a particularly unique presentation the only evidence available to Dr Hoe as to when those injuries were caused as from the appellant himself.
- 45.** In his submissions Mr McVeety raised the point that at no time during his considerable experience within this jurisdiction had come across a medicolegal report that was able to pinpoint the time and place where injuries of this nature had occurred, as opposed to whether the scarring or marks an individual has supported evidence of torture or other alleged causation. The question of where the events occurred that led to the injuries is tied in with the credibility of the appellant's account. The Judge gives adequate reasons for why it was not accepted that the appellant's account is credible.
- 46.** At [38], in relation to scarring, the Judge further writes:
38. The Appellant does not make any specific reference to which scars on his body are attributable to his time in Libya. The general thrust of his account there is that he worked as a farm labourer, something of which he had no experience or knowledge previously. He was recaptured after trying to run away, beaten on his return after being caught and threatened with death at the

hands of the farmer. The scars on his body have been attributed to blunt force trauma, being hit with a rod or being whipped, all of which are just as likely to have been part of the ill-treatment he received in Libya during his two years there. The details of his beatings in Libya were not relayed to Dr Hoe, so she was unable to comment on whether or not the scars were consistent or highly consistent with the ill-treatment he suffered there. The Appellant is adamant that he received the scars as a result of events in Sudan and completely discounts any suggestion that they were because of his servitude in Libya, which would indicate his memory is better than he claims as if his memory is affected by his PTSD and depression, it is unlikely he would be able to recall the cause of specific scars. I note that many of the scars are attributed to cigarette burns but again, there is still the dubiety of whether they were received in Sudan or Libya.

47. The Judge notes at [27] that the appellant had no recollection of the dates he claimed he attended political demonstrations in the UK other than to say they were in late 2018 and 2019 although he was able to recollect the exact dates he claimed he had left Libya some 14 years earlier. The Judge also noted there was no mention of such activities to Dr Hoe.

48. The Judge clearly considered with the required degree of anxious scrutiny the report from Peter Varney as part of the holistic assessment of the evidence. The Judge's finding at [31] that as the appellant's claim to be known to the security forces had not been believed he would not be of adverse interest at the airport is a finding within the range of those reasonably available to the Judge on the evidence. The Judge, in this paragraph, considers the position in the alternative but they are *obiter* comments. In relation to such the Judge writes at [37]

37. Therefore, even if I am to find the Appellant credible as to why he left Sudan in 2013 it does not mean the Appellant will be targeted on his return or that anybody who may have been involved with him in 2013 is still 'in power' today. The Appellant does not know who arrested and detained him as he claims to have been ordered into the back of a truck with many others before being taken to a place in an unknown location that may or may not have been a regime or NISS or Janjaweed run detention centre. There is even less detail of what happened once he claims he brokered an agreement to provide information on JEM as his statement claims that on release he went to his uncle and from there he left the country.

49. I find no merit in the submission made in the grounds that the Judge made no clear findings on the issue of credibility. At [43 -47] the Judge writes:

43. Given the evidence before me, both oral and written, I do not find the Appellant to be a witness of the truth in respect of the events that he claims led him to leave Sudan in 2013. Whatever the reason he left and went to Libya, once there he claims to have spent two years in servitude to an unnamed farmer in an unknown part of Libya. He chose this course of action as, on being detained in Libya on his arrival he had the choice of contacting his relatives in Tripoli to secure the payment of the ransom for his release or let some unknown farmer pay it for him, which would be tantamount to be sold in a slave market. He says his relatives in Tripoli would not have the money but he has not provided any

explanation as to how he would be unable to ask those relatives to contact his uncle in Khartoum (or Omdurman) to have money sent to pay for his release, after all, his uncle was able to provide him with funds to leave Sudan and he, or another uncle, was running a successful supermarket in which the Appellant was employed.

44. The Appellant claims his sur place activities will be known to the government in Sudan and place him at a real risk of serious harm on return. The photographs in the bundle do show the Appellant standing with others in front of a building, which may well be the Sudanese Embassy but there is nothing to distinguish it as such. The Appellant is just there, he does not face the building and does not appear to be interacting with others there. A board with Arabic writing is propped against his legs in one photograph. Whilst I can accept that it is likely he was there to demonstrate against the Bashir regime, that regime is no longer in power and, as I have found the Appellant did not come to the adverse attention of the security forces in Sudan prior to leaving, I do not accept being where he was and being amongst others protesting against a regime that is no longer in existence will place him at a real risk of serious harm on return to Sudan.
 45. Further, I find the Appellant has not established which security force he claims detained and tortured him, therefore, if the current security forces are in effect run by the same people as the security forces in power in 2013, it does not mean he would be of interest to them. Other than a passing reference by Mr. Varney to there being records kept of people who found themselves in the same position the Appellant claimed to be in, there is no independent evidence to support this information or anything that would point to there being a list of people who are of interest to the security forces should they arrive at an airport in Sudan.
 46. The Appellant has offered no further explanation as to why he did not claim protection in Italy or France, despite having the opportunity to do so and in the knowledge that the reasons he provided before the previous judge were not accepted as a reasonable excuse. The failure to claim protection still remains an adverse credibility point for the Appellant.
 47. For these reasons, I do not accept or find the Appellant has established that he would face persecution or a real risk of serious harm should he be returned to Sudan at this present time because of having inadvertently come to the adverse attention of the security forces in Sudan in 2013 when he was not politically active or because of any political activity he has participated in while being in the United Kingdom.
- 50.** It is not made out these findings fall outside the range of those reasonably available to the Judge on the evidence.
- 51.** Ms Cleghorn made specific reference to the alleged failure of the Judge to treat the appellant as a vulnerable witness. Reference is made to the Joint Presidential Guidance Note No 2 of 2010 which provides guidance regarding child, vulnerable adults, and sensitive witnesses. A person with mental health problems falls within the definition of vulnerable.

- 52.** The grounds do not suggest that the Judge conducted the hearing in anything but an appropriate manner in light of the appellant's presentation and the evidence. The guidance at paragraph 10.3 in relation to assessing the evidence highlights that the order and manner in which evidence is given may be affected by mental, psychological or emotional trauma or disability, that some forms of disability cause or result in impaired memory, and comprehension of questioning may have been impaired.
- 53.** In relation to writing the determination, the guidance reminds judges at [13] that the weight to be placed on factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof, and whether the individual is a witness or an appellant. At [15] it is written:
- "The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it is thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind."
- 54.** In [7 - 8], in which the Judge identifies the agreed issues, there is no reference to the Judge being asked to consider the issue of vulnerability. The Judge was, however, aware of the medical evidence as she writes at [48]:
- "The Appellant has been found to be suffering from mental health issues by Dr Hoe. She has found that he has PTSD and mild depression. The Appellant advises that he has spoken with his general practitioner (GP) about this, receive medication to help him sleep and has had counselling from a psychologist. He is currently waiting for a place on a counselling programme being organised for him by a charity (according to Dr Hoe in her report) although he tells me it is through his GP. I have not had the benefit of seeing his medical records but the Appellant tells me that on his first visit to the GP in Bradford, his only ever received and continues to take medication for his sleep problems but has not been described any other medication. This is at odds with Dr Hoe".
- 55.** The Judge clearly did factor into the assessment the medical report and the appellant's physical and psychological presentation. The appellant has not established the Judge failed to consider the report of Dr Hoe with the required degree of anxious scrutiny. Although it is accepted there is reference in the report to the person's memory being affected by PTSD and depression, which clinically is not disputed by the Judge, it is clear that this appellant was able to recall a substantial amount of specific detail in relation to some matters but not in relation to other matters it was reasonable to have expected him to have been able to recollect.
- 56.** I do not find that the Judge was unaware of any issues arising as a result of the appellant psychological presentation or that the same were not factored adequately into the decision-making process. I find no procedural unfairness in the manner in which the Judge conducted the hearing or assessed the evidence made out.
- 57.** The Court of Appeal have made it abundantly clear to appellate judges that they should not interfere in the decisions of those below unless legal error material to the decision under challenge has been established. In this matter, the Judge has not erred in the application of the Devaseelan principles. It is accepted that before Judge Myers there was no medical evidence, but the Judge clearly considered the medical evidence that had been produced by the appellant and on

the appellant's behalf when coming to the overall conclusion the claim lacked credibility and no real risk had been established. The Judge's findings are adequately reasoned and have not been shown to be outside the range of those reasonably available to the Judge on the evidence. Disagreeing with Judge's findings or seeking a more favourable outcome to enable the appellant to remain in the United Kingdom does not established legal error. As this is a sustainable decision it is not appropriate for the Upper Tribunal to interfere any further.

Notice of Decision

- 58.** There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration Asylum Chamber

22 February 2023