IAC-AH-CO-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09268/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 15 September and 10 December 2014	**On 22 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MK (EGYPT/GAZA STRIP)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Harvey (15 September) and Ms J. Elliot-Kelly (10 December), Counsel instructed by Blavo & Co Solicitors
For the Respondent: Mr T Melvin, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against a decision by the Secretary of State to refuse to recognise him as a Palestinian refugee from the Gaza Strip. The First-tier Tribunal made an anonymity direction, and I consider that it is appropriate that the

appellant is accorded anonymity for these proceedings in the Upper Tribunal.

2. The respondent maintains that the appellant is a national of Egypt, and that his entire asylum claim has been fabricated.

The Hearing Before, and the Decision of, the First-tier Tribunal

3. The appellant's appeal against the refusal of asylum came before Judge N M K Lawrence sitting in the First-tier Tribunal at Hatton Cross on 4th June 2014. In his subsequent determination, he summarised the appellant's case at paragraphs 14 onwards.

4. The appellant had been born and brought up in the Gaza Strip. After completing his studies there, he had gone to Egypt to study at university. He then returned to the Gaza Strip. He had difficulties in finding employment. He started in the construction industry, but eventually found employment as a teacher. In 2006 he was stopped by two men whilst travelling to work, and forced into their car. He was interrogated about a friend of his called Adel (aka "Adil"). The men claimed that Adil was a member of Hamas. The men demanded information about Adil's activities. The appellant could not provide any information because he knew nothing about Adil's activities.

5. The appellant was again stopped by the same two men. The men asked the appellant to spy for them, but he refused. The men warned the appellant that if he refused, they would abduct his family.

6. The appellant claims that he was then abducted, blindfolded and taken to an unknown location. When his blindfold was removed, he saw his family there. They were all being held in a small room. The appellant said he was tortured, including sexually. He was continuously interrogated about Adil. His family was also subjected to similar torture during their captivity. The appellant was released, but warned that if he did not comply with their request he would be subjected to the same treatment again. He was given one month to comply. He returned home, and administered self-medication for his injuries. His family raised funds to help the appellant flee from the Gaza Strip before one month had elapsed.

7. The respondent disputed the appellant's claimed nationality, relying on a linguistic analysis by Sprakab. The Sprakab Report of September 2013 concluded that the appellant's linguistic background was with a very high degree of certainty assessed to be Egyptian. While he claimed to be a Palestinian from the Gaza Strip, his language use was not congruent with Palestinian Arabic.

8. The appellant relied on a linguistic report from his own expert in opposition to the two Sprakab Reports relied on by the respondent. At paragraphs 21 to 39, the judge gave detailed consideration to all three reports, and gave extensive reasons for reaching the following conclusion at the end of paragraph 39: "It is more than likely [that] the appellant is Egyptian [rather] than someone from the Gaza Strip."

9. The judge then went on to consider the appellant's asylum claim. He began at paragraph 40, with the following observation:

> If the appellant is from Egypt his asylum account must be, ipso facto, false. However, I go on to anxiously scrutinise the merits of his asylum case as though he is from the Gaza Strip. I have considered the appellant's interview accounts from the witness statements, the other written accounts and the oral evidence to ascertain the basis of his claim.

10. At paragraphs 41 to 55, the judge identified a number of inconsistencies and discrepancies in the appellant's account of his alleged experiences in the Gaza Strip, so as to reach the following conclusion at paragraph 56:

> In short, this appellant's account changes with each recital. It takes a different permutation and new form of tortures and weapons of torture feature. I find these variations of permutations are as a result of the appellant manufacturing [a] false basis on which to build an asylum claim. The appellant is not a creditworthy witness. I reject his entire asylum account. It is a figment of his imagination and has no basis in reality.

11. The judge then went on to consider, under the heading of Medical Issues, a psychiatric report prepared by Dr Nimmagadda and a scarring report prepared by Dr Payne-James. With regard to the latter, the judge said at paragraph 62 it was not disputed that the appellant had scars. The appellant had the legal burden to prove their attribution. He found the appellant was not a truthful witness. The appellant had not discharged the burden of proving, on balance, that the account of torture, that he had put forward, resulted in those scars. The judge did not accept the scars were attributable to the alleged acts of violent torture allegedly sustained in the Gaza Strip. The judge went on to dismiss the appeal on all grounds raised.

The Application for Permission to Appeal

12. Mr Paul Harvey of Counsel, who did not appear below, settled extensive grounds of appeal to the Upper Tribunal on behalf of the appellant. He submitted that, as with all cases involving independent medical evidence, the appropriate course would have been to consider all of the evidence adduced in support of the

appellant's account, including the independent medical evidence, and then, having considered that evidence, to reach conclusions upon the credibility of the appellant's account. By not proceeding in that manner, the learned judge had failed to give due and appropriate weight to the fact that medical evidence was independent evidence corroborating the appellant's account, rather than evidence which fell to be rejected because the account had been rejected on other grounds.

The Grant for Permission to Appeal

13. On 16 July 2014 First-tier Tribunal Judge White granted the appellant permission to appeal, as he was satisfied that in reaching his decision the judge had argued made an error of law by failing to consider the medical evidence produced "in the round" in judging the appellant's credibility. The judge had already found at paragraph 56 that the appellant was not credible in his account before proceeding to consider the medical evidence at paragraph 57 onwards.

The Error of Law Hearing on 15 September 2014

14. Mr Harvey developed the argument raised by him in the grounds of appeal, and referred me to a number of authorities including **Mibanga [2005] EWCA Civ 367**, **SA (Somalia) [2006] EWCA Civ 1302** and **JL (medical reports – credibility) China [2013] UKUT 00145 (IAC)**.

15. On behalf of the respondent, Mr Melvin submitted there was no error in the judge's approach. Alternatively, if there was, the error was not material, as there was no flaw in the judge's finding that the appellant was Egyptian, whereas the appellant only related his fear of return to the Gaza Strip.

16. I found that there was an error of law, and my extended reasons for so finding are set out below. While the error required the decision on asylum to be set aside and remade, it did not require a de novo hearing in the First-tier Tribunal. So a continuation hearing was fixed before me in the Upper Tribunal.

Reasons for Finding an Error of Law

17. Once the judge reached the medical reports, he did not reject them solely on the basis that he had already found the appellant not to be a credible witness. However, his consideration of the probative value of Dr Payne-James' scarring report is very brief, and he does not acknowledge that in Dr Payne-James' opinion some of the scars observed on the appellant's body are "highly consistent" with the cause attributed to them by the appellant.

18. In **SA (Somalia)**, the Court of Appeal found at paragraph [33] that the Adjudicator's decision was open to the criticism in the light of **Mibanga** that, as a matter of form, the content of the medical report was dealt with as an add on, following the section in which, as a result of examination of the evidence of the appellant, the Adjudicator found him to lack credibility and to have fabricated his case:

> [O]n that narrow basis there appears to have been a breach of the approach prescribed in **Mibanga**, namely that medical evidence corroborative or potentially corroborative of the appellant's account of torture and/or fear of persecution should be considered as part of the entire package of evidence to be taken into account on the issue of credibility.

19. In that particular case, the Court of Appeal found there was no material error because there was a lack of any positive opinion by Dr Madan as to the cause of the lesions observed. This is not a criticism that can be levelled against Dr Payne-James.

20. While there is no discernable error in the judge's discrete analysis of the linguistic reports, before reaching a final conclusion on the credibility of the appellant's core claim the judge needed to take account of the independent evidence supporting the appellant's account of torture. The weight which he gave to such evidence was a matter for him, but it was an error of law not to consider it at all before reaching a conclusion on credibility. The appellant was thus deprived of the possibility of the judge finding the medical evidence to be so persuasive as to outweigh the other evidence pointing to the appellant as originating from Egypt, not from the Gaza Strip.

The Forum for, and Scope of, the Remaking of the Decision

21. My ruling at the error of law hearing was that the judge's error did not engender a requirement for a de novo hearing, or for the receipt of further oral evidence from the appellant.

22. Mr Harvey also confirmed that there was no appeal against the dismissal of the Article 8 claim, and that no claim was being pursued on Article 3 (suicide risk) grounds.

23. Accordingly, I was of the view that the Upper Tribunal was the appropriate forum in which to remake the decision; and that the continuation hearing should proceed by way of submissions only on the evidence that was before the First-tier Tribunal, with one exception.

24. In the course of oral argument, it became clear that there was one evidential issue that needed to be explored, and hence the need for an adjournment. The basis of the appellant's asylum claim was

that he was ill-treated because he was suspected of being a member of Hamas, or suspected of being associated with Hamas through a friend. But Hamas have since taken control of the Gaza Strip, as Mr Harvey acknowledged. So the question which arose was whether, even if it was true that the appellant suffered persecution in the past as a suspected member of Hamas, he would still be at risk of such mistreatment now on his hypothetical return to the Gaza Strip. As this was not canvassed below, it was only fair that the appellant should be given the opportunity to address this question by reference to the current country material.

The Grant of Permission on 5 November 2014 to the Appellant's representatives to adduce additional oral evidence from the Appellant

25. The resumed hearing was initially listed before me on 5 November 2014. On that occasion, Ms Elliot-Kelly applied for permission to adduce further oral evidence from the appellant, contained in a third witness statement. After some debate, I was persuaded that it was in accordance with the overriding objective to grant Ms Elliot-Kelly's application, which meant that the hearing had to be adjourned to another date so that an Arabic interpreter could be booked.

The Resumed Hearing on 10 December 2014

26. At the outset of the hearing on 10th December 2014, Mr Melvin applied for permission to rely on the appellant's initial screening interview which he had discovered when going through an old file.

The initial screening interview

27. The appellant had made his claim for asylum on 19 December 2007, and the screening interview took place two days later. The appellant was asked whether he was in general good health, and he said that he had high blood pressure, a condition for which he had taken medication in the past, but was not currently taking medication. His family in Gaza consisted of his mother, aged 55, a sister aged 29, and a brother aged 33. All of them were alive. He had last seen his mother and siblings in Gaza three years ago. He had gone from Gaza to Amman in Jordan. After spending one month there, sleeping rough, he had travelled to Aleppo in Syria, where he had slept rough for two months. He had then travelled to Turkey, where he had spent a month sleeping rough. He could not remember precisely when he had reached Milan, in Italy. But he had worked there occasionally for one year. He had arrived a week ago in the UK, but did not know which port. He had boarded a lorry at Calais, having paid a Sudanese agent the sum of €500. His birth certificate was in Gaza. He had not claimed asylum en route, because his intention was always to reach England. The

reason for coming to the UK was to claim asylum as he feared for his life from the occupation. He later explained that, having left Italy, he had spent one and a half years in Paris, where he had worked occasionally. He had last worked as a general labourer in Paris about four months ago.

The reasons for allowing its late introduction

28. The principal significance of the screening interview from the respondent's perspective was that the appellant had since claimed that he had not left the Gaza Strip until 2006, which was the year when he claimed that he and his family had been ill-treated because of his friendship with Adil. Ms Elliot-Kelly opposed the introduction of the new evidence, as it had only been served the day before and the solicitors had not had enough time to take instructions from their client about its contents.

29. I was satisfied it was in accordance with the overriding objective that the screening interview should be admitted into evidence. The reason for Ms Elliot-Kelly seeking to adduce further oral evidence from the appellant was to bolster his credibility and to address afresh the adverse credibility findings made by the First-tier Tribunal. Accordingly, it was fair and just that the respondent should be permitted to bring forward new evidence which was potentially of pivotal significance on the question of the appellant's general credibility. I was satisfied that the procedural unfairness consequential upon the evidence being introduced very late could be cured without the need for the appeal to be adjourned to another day. With Mr Melvin's consent, I gave permission to Ms Elliot-Kelly to take instructions on the screening interview from her lay client with the assistance of the court interpreter (who was agreeable to providing such assistance); and to use the information gleaned from her lay client to prepare a fourth witness statement in manuscript.

The appellant's additional oral evidence

30. After an adjournment of about an hour, the hearing continued. The appellant gave his evidence through an Arabic interpreter whom he clearly understood. He adopted as his evidence-in-chief his fourth witness statement, and also his previous witness statements, with one exception. What was nominally his first witness statement was in fact an amended version of the first witness statement which he had adopted before the First-tier Tribunal. Ms Elliot-Kelly explained that the original first witness statement had been amended to reflect the evidence which the appellant had given in cross-examination.

31. In his original first witness statement, the appellant had given largely the same account as summarised by Judge Lawrence in

paragraphs 14 onwards of his determination (see paragraphs 4 to 6 above). It is helpful at this stage to note the differences. In the original version of the first witness statement it was not suggested that the appellant had refused to give information about Adil, or that his persecutors had threatened to abduct his family if he continued to be unco-operative. Also, whereas (according to Judge Lawrence) the appellant's case was that he returned home after the detention, and administered self-medication for his injuries, at paragraph 10 of the first witness statement the appellant said that after reaching home, he noticed his hand was hurting and therefore went to Al-Shifa Hospital walk-in to get it seen to. The key difference between the original version of the first witness statement and the new version adopted before me was that in the original version the appellant claimed at paragraph 6 that when he was first stopped, he was told that he was believed by the authorities to be part of the Hamas group "a rebel group to the political party of the government". But in the new version, this claim was deleted. So the new claim was only that the persecutors suspected Adil of being a member of Hamas, not that they suspected the appellant of being a member of Hamas as well.

32. The appellant's second witness statement was taken in manuscript by Ms Elliot-Kelly on the day of the hearing in the First-tier Tribunal. In this statement, the appellant said that his friend used to work with Hamas. When they let him go, he did not try to get any information about Adil and Hamas. He did not like to spy on his friend, and he did not want to harm him. Anyway, he did not know anything about his involvement with Hamas. His family did not attend hospital after the detention, because while they had injuries and bruises, they were not serious enough for hospital treatment. He had not been in touch with his family since leaving Gaza, because he feared for their lives and their safety if he made contact with them.

33. In his third witness statement made on 24 October 2014, the appellant said that he had been suffering from mental health problems throughout 2013. He had tried to commit suicide on three occasions, including outside the mental care hospital health centre on 16 January 2013, and trying to strangle himself in the mental care centre on 21 January 2013. His asylum interview in August 2013 had taken place during the period of Ramadan, meaning that he was fasting. In addition he felt alone, mentally drained and physically unwell. Both his concentration and focus was thus adversely affected.

34. In his fourth witness statement the appellant said he was very tired and had been in a cell for a few days at the time of his screening interview. He was very scared because someone at the police station had told him that they would return him to Gaza. He also found it very difficult to understand the interpreter, and he

sometimes just gave the answer that he thought the interviewing officer was looking for, even though he did not understand the question.

35. He often got confused about dates and past events because of what had happened to him in Gaza. He could not remember why he had said that he left Gaza three years ago, but that was incorrect. He had only been gone from Gaza for approximately one year at the time of the screening interview. The reason why he had said in his screening interview that he had received no education, and did not say that he was a teacher, was because he thought he needed to hide information in case they sent him back to Gaza. He was also worried that if he mentioned his studies in Egypt, they would try and send him back to Egypt.

36. It was true that he had spent periods of time in Jordan, Syria and Turkey. But it was not true that he had spent a year in Italy, and one and a half years in France. He had only spent a few months in Italy, and approximately five months in France.

37. In cross-examination, the appellant said he could not recall how long he had lived and worked in Italy. He had worked in Italy to get money to finance his trip to the United Kingdom via France. He had not spent one and a half years in France, and he had not said that in the screening interview. He would not have given a specific time. He had actually spent approximately five months there. He had left Gaza in maybe October or November 2006. He could not be more exact.

38. The appellant agreed that after making his asylum claim, he had been housed in Glasgow, from where he had absconded in the middle of January 2008. The appellant's explanation was that he was scared, so he had gone to hide in London. He spent a number of years in hiding in London, living rough and getting assistance from a mosque in the Edgware Road. Finally, he had met a guy called Ali in November or December 2012 at the Finsbury Park mosque, and it was Ali who had persuaded him to renew his claim for asylum. His mental health problems had started in 2012.

39. His friend Adil had been accused of links with Hamas. But he did not know whether Adil was linked with Hamas or not. Adil had not told him about his links with Hamas. He had not discussed the approach made by his persecutors with Adil, as Adil had already disappeared at the time of the first approach. He had not gone to Hamas for help as Hamas were in hiding.

40. In answer to questions for clarification purposes from me, the appellant explained that Adil lived seven minutes walk away in the same district. He lived with his family, which included his father,

mother and sisters. They did not disappear at the same time as Adil. They did not know how to make contact with Adil.

41. Mr Melvin asked whether the persecutors had visited Adil's family to enquire about his whereabouts. The appellant replied that they had put pressure on Adil's family, and eventually they had abducted them. He did not know what had happened to them after that.

42. It was put to the appellant that some of the details which he had given of his torture in his first witness statement had not been mentioned in his asylum interview. The appellant answered that it was during Ramadan, and he did not have his medication. He agreed that in interview he had said that he had not attended hospital after the detention. He was questioned as to why his family had not gone to hospital, given that he said that his brothers had been castrated, and his mother and sister raped. He said that his mother and sister had not gone for treatment in the hospital as in their culture the shame of rape was such that they would have to commit suicide if they did not hide the fact that they had been raped. He had not said that both brothers were castrated. His youngest brother was left alone because he was young. The other brother was "cut".

43. After an adjournment for lunch, Mr Melvin resumed his cross-examination. He asked the appellant why he had left Gaza, but not the rest of his family, especially given his account of the fate of Adil's family. He answered that they had only abducted his family to put pressure on him. He had not tried to contact them out of fear. He also had not tried to contact the schools in Gaza where he said he had taught maths. Again this was because of his fear, and also he had not got contact details for the schools. He was asked why he had not contacted the university in Egypt where he had studied in order to obtain their records of his identity and nationality. He said he had made enquiries on the internet. They had said that he had to be in Egypt to get the evidence. There was no re-examination.

44. In his closing submissions on behalf of the respondent, Mr Melvin invited me to make an adverse credibility finding against the appellant. Apart from numerous internal discrepancies in his account, which had multiplied, his account was contrary to the background evidence. At page C30 in the appellant's bundle, the following was stated in the Occupied Territories 2012 Human Rights Report:

> Although PA laws apply in the Gaza Strip, the PA had little authority in the Gaza Strip and none over Israeli residents of the West Bank. In the 2006 Palestinian Legislative Council (PLC) elections, candidates backed by Hamas, a terrorist organisation, won 74 of

the 132 seats and elections generally met democratic standards. In 2007 Hamas staged a violent takeover of PA government installations in the Gaza Strip.

45. In reply, Ms Elliot-Kelly submitted that it was not until 2007 that Hamas was in total control, and thus the appellant's account did not run counter to the background evidence. The information at page C98 showed that the appellant would be at risk from non-Hamas factions on return to Gaza, as he had been at risk from non-Hamas factions in 2006. She referred me to her detailed skeleton argument, and submitted that, having regard to the highly persuasive medical evidence, the appellant had discharged the burden of proving that the core of his claim was true.

Discussion and Findings

The Burden and Standard of Proof

46. In international protection claims, the standard of proof is that of real risk or reasonable degree of likelihood. Evidence of matters occurring after the date of decision can be taken into account.

Past Persecution or Serious Harm

47. Under Paragraph 339K, the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indicator of the person's well-founded fear of persecution or serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

Duty to Substantiate Claim for International Protection

48. Paragraph 339L of the immigration rules provides that it is the duty of the person to substantiate his claim. Where aspects of his claim are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

    (i) The person has made a genuine effort to substantiate his claim;

    (ii) All material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;

    (iii) The person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;

(iv) The person has made his claim at the earliest possible time, unless the person can demonstrate good reasons for not doing so;

(v) The general credibility of the person is established.

The medical evidence

49. The appellant's GP medical records go back to November 2011. On 1 December 2011 the appellant presented at surgery with a housing problem. He had been in the UK for four years, and stayed with friends in Manor House or in the Edgware Road, and he was sometimes sleeping rough on the street in Camden. He was not on benefits, and family were helping him with money. He had been suffering from constipation for the past two years. Over the coming months, he had a number of visits to the surgery with respect to this condition, and also with a view to treating his hypertension.

50. The appellant first sought treatment for depression in October 2012, which the doctor understood to be linked to issues with sexual intercourse and his wife. In November 2012, the appellant said that his depressive symptoms were returning. In December 2012, he consulted a doctor at the surgery about a problem of sexual dysfunction. The appellant first made a torture claim to his GP on 14 January 2013. He said he had been tortured in Gaza nine to ten years ago. He had been beaten and had Kalashnikovs pointed at him. There were smacking sounds and also voices speaking to him. These had started as memories, but now the new voices were saying things. The voices had told him to die and leave this life. He contemplated jumping in front of a train approximately one month ago, but had been stopped by people on the platform.

51. The appellant received in-patient treatment at Highgate Mental Health Centre from 16 January 2013 to 26 April 2013. On 20 May 2013 the records note a diagnosis of acute fear of depression with psychotic features and high suicide risk. The appellant was likely to have PTSD "worsened by inter action with Home Office Nov 2012". His asylum application was ongoing, and a solicitor was investigating the provision of accommodation under Section 21 of the National Assistance Act. The appellant has been discharged into the care of Crisis House.

52. The appellant was seen by Dr Jason Payne-James on 13 December 2013. He explained in his subsequent report that the appellant had complained of injuries from an assault in the past, and he had been asked to assess any residual marks and scars in the light of the history he provided. The appellant told Dr Payne-James he worked on a building site in Gaza in order to survive, and he also

tutored children at home privately. He was believed to be part of the Hamas group by the authorities. He was forced into a car, and whilst being in the car, he was interrogated and beaten by being slapped around and asked for information. He said he was approached by the same men about a month later at his home. At this point they arrested him, his mother and two brothers and one sister. They were all detained at a police station. He was tortured whilst being detained. The men took each member of his family and abused them in front of him. They raped his mother and sister in front of him, while also beating and castrating his brothers in front of him. They beat him with wood on the back and legs and arms and raped him with instruments, including an iron bar and a bottle. He was also struck on the head and neck, and his left buttock was cut by broken glass from a bottle, and lighted cigarettes (plural) were applied to his penis. Pliers were applied to his left chest and he was threatened with a Kalashnikov. He managed to escape through bribery. He was better now though, although sometimes he heard voices and had trouble sleeping. He had gone to university in Egypt where he took a mathematics degree, and he taught for a while.

53. The doctor went on to refer to the Istanbul Protocol. Consistent with meant that the lesion could have been caused by the trauma described but it was non-specific and there were many other possible causes. Highly consistent meant the lesion could have been caused by the trauma described, and there are a few other possible causes. With regard to the appellant's account of events, he made the following interpretations with regard to the various marks and scars observed upon a physical examination of the appellant: the left wrist scaphoid fracture was highly consistent with his account; his left chest scar was highly consistent with his account; the scars to the head were consistent with his account; the scar to the buttock was highly consistent with his account; the scar to the penis was highly consistent with his account; the scar to the left leg and left foot were consistent with his account; and the scar to his right neck was highly consistent with his account.

54. There are discrepancies between the doctor's summary of his conclusions, and the findings actually made earlier in the report. For instance, with regard to the penis, he found at paragraph 49 that the glands of the penis had a hypo-pigmented scar about 0.7 in diameter, which was consistent (not highly consistent) with the appearance of a healed burn caused by a cigarette.

55. In fact, none of the scars or marks observed is described as being anything other than merely consistent with the appellant's account, with one exception. At paragraph 46, the doctor observed that the appellant's left buttock had an irregular healed pitted scar, which was "typical" of skin that had been penetrated, becoming infected and healing without suture.

56. Nonetheless, I accept that the doctors' report has some independent probative value in supporting the appellant's account of torture.

57. In Dr Croxford's discharge summary of 12 May 2013, which is alluded to in the GP medical notes, she described the appellant's presenting symptoms and circumstances on admission. He had been admitted to Topaz Ward after trying to jump under a train. He had been feeling depressed and suicidal for some weeks, with auditory hallucinations telling him to end his life. He had been of no fixed abode after a failed asylum seeking request made some years ago. He had come to the UK from Gaza five years ago after being tortured approximately ten years ago by Israeli secret police as he was acquainted with individuals involved in anti-Israeli activities. He had moved to London two years ago from Glasgow and had been of no fixed abode since due to concerns that he would be deported. He sometimes slept at the local mosque, which had been supportive. On 16 January 2013 on Sapphire Ward he had wanted to kill himself by throwing himself at the window, but had not done so due to hearing an angry voice telling him it was forbidden. On 21 January 2013 he had attempted to strangle himself with bed linen, and was then put on close observation. His mental state on discharge was improved. He had a good insight into his condition, and was consenting to treatment.

58. The appellant was seen by Dr Nimmagadda, consultant forensic psychiatrist on 17 May 2014. In his subsequent psychiatric report dated 31 May 2014, he said he had been instructed to assess his mental health and to give his diagnosis. He had also been instructed to establish whether his condition was as a result of the trauma he had suffered and whether his mental health could result in him having a loss of memory.

59. The appellant told the doctor that his mother was a 68 year old housewife, and he had two younger brothers aged 40 and 27 respectively, and a younger sister aged 34. He described himself as a bright student: he did well at school and earned a place at university in Egypt, where he obtained a Bachelors degree in mathematics. After that he came back to Gaza, and secured a job as a mathematics teacher in a secondary school where he worked for five to six years. On examination, the appellant was well orientated in time, place and person. There was some impairment in his intention and concentration, but there were no immediate problems in his immediate, short term and long term memories. Based on his own account, there was evidence to suggest that the appellant's symptoms of PTSD were raised within six months after the traumatic incident and had been present for a long period of time. These symptoms caused clinically significant distress and impairment in all areas of his functioning. But he did not pick up any evidence of a significant memory loss. In his opinion, given

that he was suffering depression and post-traumatic stress disorder for a considerable period of time, it was likely that his deficits in attention and concentration were likely to explain his poor memory. He concluded that if it was established that he suffered from the self-reported traumatic incidents in Gaza, it was highly likely that they were the cause for his PTSD and subsequent depressive illness. It was also likely that the separation from his family and the continued threat of being persecuted if he was returned to Gaza, coupled with his ongoing circumstances in the UK, were likely to be perpetuating factors for his depression.

60. As I pointed out in the course of oral argument, there is a big "if" in Dr Nimmagadda's conclusion. The diagnosis of PTSD is of limited probative value because it is largely based on the appellant's self-reporting of both his symptoms and the alleged cause of his symptoms, albeit that the alleged cause is supported to a degree by the report of Dr Payne-James. Of particular significance is the fact that there is no independent documentary record of the appellant suffering the symptoms of PTSD, or indeed depression, before the latter part of 2012. Accordingly, I find that the report of Dr Nimmagadda has very limited utility in supporting the appellant's claim of being tortured in Gaza in 2006 (or in 2003). For the same reason, I find the report is of limited utility in so far as it is relied upon to neutralise the adverse credibility concerns arising from the discrepancies in the appellant's narrative. If he is suffering from PTSD as a result of being tortured in Gaza as claimed by him, this might reasonably account for the internal discrepancies and inconsistencies noted by Mr Melvin. But the psychiatrist's diagnosis of PTSD as a result of torture is dependent on the account of torture being true, as the psychiatrist himself acknowledges. Moreover, the appellant claims to have a firm and reliable memory of some aspects of his core claim, such as the length of time he spent in Italy, and the year in which he was tortured in Gaza.

Internal Inconsistencies

61. In my judgment, it is beyond argument that the appellant's account discloses significant internal discrepancies and inconsistencies, and each time the appellant is questioned, his credibility is further undermined rather than salvaged. There is a major inconsistency in the appellant asserting on the one hand that he left Gaza in 2003 or 2004 (according to the screening interview) as against his case by way of appeal that he left Gaza at the end of 2006. What the appellant said in his screening interview is entirely consistent with what he is recorded as having told healthcare professionals, including Dr Nimmagadda. For if he had suffered ill-treatment nine to ten years ago as of 2013 or

2014, he would, on his own case, have left Gaza well before 2006. Moreover, in the screening interview the appellant did not claim to be suffering from any ill-health beyond high blood pressure. If he had been brutally tortured in Gaza relatively recently, it is very likely that he would have been suffering from the symptoms of PTSD at the time of his screening interview, according to Dr Nimmagadda. So the absence of a claim by the appellant of suffering any PTSD symptoms at the time of the screening interview, despite being given the opportunity to report such symptoms, severely damages the appellant's general credibility.

62. The appellant's account of his alleged experiences in 2006 is internally inconsistent and lacking in credibility. At one point the appellant has claimed that he knew that his friend Adil was a member of Hamas, but at other points he has insisted that he did not know whether he was involved with Hamas or not. At one point the appellant has claimed that he was himself accused of being in Hamas, which would explain why a rival faction or Israeli intelligence would want to recruit him as a spy. The appellant has changed his evidence to say that he was not accused of being in Hamas. This weakens his claim objectively, as if his persecutors did not suspect him of being involved in Hamas, it is inherently unlikely that they would seek to recruit him as a spy. Another inconsistency is over the appellant's response to the alleged approach. He has variously said that he refused to co-operate; or that he simply told them that he did not have any information. In one version of events, he was threatened for his non-co-operation following a refusal, on another version of events there was no threat made as to what would happen to his family if he did not co-operate. In his oral evidence, the appellant introduced a new detail, which only served to damage his general credibility even further. This was that Adil had disappeared at the same time as he had been first approached to spy on Adil. But it is not part of the appellant's narrative that, on the second approach, he was asked about Adil's disappearance; or that when requested to give information about Adil, the appellant gave them the obvious answer that he could not spy on Adil as Adil had disappeared.

63. The appellant has also not been consistent on the question of whether he received hospital treatment or not, and as to why his family members did not receive hospital treatment. The appellant has said on more than one occasion that both his brothers were castrated, and his explanation before me that his youngest brother was not ill-treated because he was too young does not fit with the fact that his youngest brother was already an adult by 2006. Clearly, having been castrated, the brothers' need for hospital treatment would have been much more acute than the appellant's need for hospital treatment. Moreover, given what had allegedly happened to Adil's family, it is not credible that the

entire family would not have sought to flee the Gaza Strip, and not just the appellant.

64. Finally, although Hamas did not take control of the Gaza Strip until 2007, the appellant's account runs counter to the background evidence insofar as his explanation for not seeking their assistance was that Hamas were in hiding. This is clearly untrue, as Hamas backed candidates had won the majority of the seats in the January 2006 elections. So Hamas had come out of the shadows, and were powerful actors in the Gaza Strip in 2006.

The linguistic evidence

65. Ms Elliot-Kelly asked me to look again at the Sprakab Reports relied on by the respondent, and the expert evidence in rebuttal from Samia Adnan. I have done so, and I find no reason to depart from the findings of the First-tier Tribunal Judge on this aspect of the case which is not challenged by way of appeal to the Upper Tribunal. Essentially, the First-tier Tribunal Judge preferred the expert evidence provided in the first Sprakab Report to the expert evidence provided by Ms Adnan. As with the medical evidence, the linguistic evidence has independent probative value. It is not of course determinative of the case against the appellant, any more than the medical evidence is determinative of the case for the appellant.

The factual conclusions

66. Having taken into account the totality of the evidence before me, I find that the respondent has discharged the burden of proving on the balance of probabilities that the appellant is an Egyptian national, and that the appellant has not discharged the burden of proving to the lower standard of proof that he is a Palestinian national from the Gaza Strip, and that his claim of past persecution and future risk in the Gaza Strip is true.

67. Accordingly, the appellant does not qualify for recognition as a refugee from the Gaza Strip. As it is not proposed to remove him to the Gaza Strip, but to Egypt, the appellant's alternative claim under Article 3 ECHR necessarily falls away. But for the avoidance of doubt, even if I had accepted the appellant's core claim (contrary to my primary findings of fact), there are not substantial grounds for believing that the appellant would face a real risk of persecution or ill-treatment of such severity as to cross the threshold of Article 3 ECHR on a hypothetical return to Gaza. This is because of the length of time which has elapsed since the appellant's departure from Gaza.

Decision

68. The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: this appeal is dismissed on asylum and human rights grounds.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed Date **22 December 2014**

Deputy Upper Tribunal Judge Monson