Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/50178/2020**
LP/00179/2020

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On the 24 June 2022	**On the 13 September 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

AS Appellant
(ANONYMITY DIRECTION MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Ms Mair
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Egypt and born on 25th November 1986. The Appellant was granted a visitor's visas in September 2018, November 2018, and then from 10 July 2019 to 10 January 2020. The Appellant arrived in the UK on 5 November 2019 and claimed asylum on 7 November 2019. His claim was refused by the Secretary of State on 18 March 2020. The appellant appealed the First-tier Tribunal, which, in a decision dated 19 November 2020, dismissed the appeal. the appellant now appeals, with permission, to the Upper Tribunal.

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2. At the initial hearing at Bradford on 24 June 2022, Mr Diwnycz, who appeared for the Secretary of State, told me that 'any one of the grounds of appeal' indicated that the judge had fallen into material error. He said that the grounds concerning the judge's treatment of the appellant's medical evidence were 'particularly telling.' Mr Diwnycz did not formally concede the appeal but, in the circumstances and in the light of his comments, I shall be brief.

3. I find that the judge did err in law by failing to make a finding of fact on the core issue of the appellant's claimed attendance at demonstrations in Egypt. At [15], the judge wrote:

> The Appellant has submitted a significant amount of corroborative evidence. He has submitted his ID card from the General Organisation for Human Rights, and from the elections committed. He has submitted further documents referring to and produced by the General Organisation for Human Rights. There are various pictures of the Appellant attending events that are said to be related to his work with the General Organisation for Human Rights. No particular criticisms of this evidence are made by the Respondent in the decision letter. The Appellant has given a plausible account with supporting evidence of his work in this regard. That said, I do not consider that the Appellant's involvement with the human rights organisations goes necessarily to the core of the Appellant's account of events leading to his past persecution and putting him at risk on return. It is the Appellant's involvement at public demonstrations that he claims led to his detention previously. There appear to be pictures of the Appellant attending demonstrations. I was not shown any video footage of the any demonstrations or anything else.

In this paragraph the judge himself highlights the importance to the appellant's case of his claimed attendance at demonstrations. At [16], the judge notes that 'the demonstrations do not appear to fall within the core remit of the Appellant's General Association for Human Rights' but he does not reject the possibility that the organisation has been involved in demonstrations. The judge does not indicate whether he accepts the photographs as genuine and does not explain the relevance to the fact finding exercise of the absence of video footage. Above all, what the judge has not done is to make a clear unequivocal finding as to whether the appellant did or dis not attend demonstrations as he claims. Given the importance of this part of the account to the success of the appellant's appeal and in the light of Mr Diwnycz's clear acknowledgement that the appellant's appeal turns on the question of credibility, that omission of the judge amounts to a material error of law.

4. I find that there is substance also in the grounds concerning the medical evidence. At [22] he writes:

> I have considered the report from Dr Johnson relied upon by the Appellant. The conclusion of the report is supportive to the Appellant as it states the pattern of scarring found at examination today to be highly consistent with his description of the injuries sustained whilst being interrogated. There are however matters of concern in the

> report. There is something of a structural problem with the report, in that it does not clearly list the individual scars, state the claimed attribution, and then give a view on the plausibility of the claim. There is no body map. So, for instance, while in relation to the toe injury, it is said that it might have occurred as a result of the foot being stamped on, that is the only place in the report that this possible cause is mentioned. Thus, it is unclear if this is the Appellant's account. Further, while the report references the Istanbul protocol, it does not consistently apply its terminology. In relation to the claimed gun butt injuries, the protocol terminology is not used. Nor is it clearly used in relation to the forearm injury. The use of the word 'typically' appears to relate to the site of the injury rather than the claimed manner of infliction. The terminology is not clearly used in relation to the cigarette butt injury. In concluding remarks the report states none of the scars 'have appearances specific to the mechanisms described by Mr Sands'. Again, the terminology is not that of the Istanbul Protocol. I understand the report to mean that for each scar there are other possible causes other than those claimed by the Appellant.

Although the judge identifies those parts of the Dr Johnson's evidence which he considers fail to adopt the terminology of the Istanbul Protocol it remains unclear what affect, if any, this should have on the weight attaching to a report which, as the judge acknowledges, concludes by finding that the appellant's injuries are highly consistent with his account of torture. I do not say that the judge was not entitled to criticise the medical report but I do find that it is not clear why the judge's criticisms of the form and terminology of the report should necessarily undermine its central (and potentially, highly relevant) conclusions.

5. In the circumstances and for the reasons I have given, I set aside the decision. None of the findings of fact shall stand. There will need to be a fresh fact-finding exercise which is better conducted by the First-tier Tribunal to which the appeal is now returned.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo.*

Signed
Date 2 August 2022

Upper Tribunal Judge Lane

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008,
the appellant is granted anonymity.

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