



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

Appeal Number: AA/02939/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 14 October 2015**

**Determination Promulgated
On 20 October 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**OS
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Azmi, Counsel

For the SSHD: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant because this decision refers to his asylum claim.

Summary of asylum claim

2. The appellant is a citizen of Sudan who claimed asylum on arrival in the United Kingdom ('UK') on 2 September 2014. The SSHD refused the claim for asylum and the appellant appealed to the First-tier Tribunal against a decision to remove him dated 6 February 2015.
3. The appellant contends that he has a well-founded fear of persecution in Sudan on account of an anti-regime political opinion imputed to him on account of his activities in Sudan, the UK as well as for reasons relating to his ethnic origin.

Procedural history

4. In a decision dated 17 July 2015 First-tier Tribunal Judge C Mather dismissed the appellant's appeal. The judge comprehensively rejected the entire credibility of the appellant's asylum claim.
5. In a decision dated 18 August 2015 First-tier Tribunal Judge Reid granted permission to appeal observing inter alia that Judge Mather arguably failed to engage with the analysis contained in Dr Verney's country expert report.
6. The SSHD has submitted a rule 24 notice dated 25 August 2014 in which it is submitted that Judge Reid was entitled to reject the appellant's credibility for the reasons provided.

Hearing

7. At the beginning of the hearing I indicated a preliminary view to both representatives to the effect that the Judge had erred in law in failing to take into account the background and other supportive evidence supportive of the appellant's claim, when determining the credibility and plausibility of that claim. These are set out clearly within the grounds of appeal prepared by Mr Azmi.
8. Ms Johnston relied on the rule 24 notice and invited me to find that the Judge 'had done enough'.
9. After hearing Ms Johnstone's brief submissions I indicated that I did not need to hear from Mr Azmi because I was satisfied that the decision contains material errors of law and should be set aside.
10. Both representatives agreed that the errors of law that I identified are such that the decision needs to be remade completely and that given the nature and extent of those findings, this should be done in the First-tier Tribunal. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal. Both representatives also agreed to the directions set out below.

Discussion

11. The decision under appeal comprehensively rejects the credibility of the appellant's account. I note that the Judge expressly stated that

she had regard to all of the evidence put before her including the “*objective background material*” [16]. When the decision is read as a whole, the Judge has failed to consider the plausibility and reliability of the appellant’s evidence in the context of all the available evidence. The evidence supporting the appellant’s claim is very detailed. His bundle (excluding case law) runs to 432 pages. This includes the evidence I summarise below.

- i. In his detailed country expert report dated 12 June 2015 Dr Verney sets out a number of aspects of the appellant’s claim, which are consistent with the approach taken by the Sudanese authorities. This includes: professionals being interrogated on their return from the UK to Sudan; references to a referral he made on the appellant’s behalf to Waging Peace, a London based non-governmental organisation that campaigns for awareness of human rights abuses in Sudan; the practice of surveillance on the part of the Sudanese authorities on Sudanese nationals in the UK; the practice of using short-term detention and then release as a means of keeping suspected opponents under observation. Dr Verney also seeks to correct a factual mistake made by the SSHD regarding the appellant’s ethnic origin and to make the point that as a Nubian he will be regarded adversely by the Sudanese authorities.
- ii. In a letter dated 13 May 2015, the Director of Waging Peace addressed specific aspects of the appellant’s account as being consistent with the background country evidence available on Sudan. Detailed reports were attached to this letter to support the matters set out therein.
- iii. A letter from the General Secretary for Abdulateef Kamarat’s Cultural Forum (‘AKCF’) confirmed the appellant’s attendance at a forum on Sudan’s economic policies in Cardiff dated 17 June 2015.
- iv. A letter from the chairman of the Darfuri community in Wales dated 3 March 2015 supported the appellant’s claimed activities with Darfuris.

12. In my judgment the First-tier Tribunal has erred in law in its approach to the evidence set out at (i) to (iv) above, and has erred in law in its credibility findings. In R (HK) v SSHD [2006] EWCA Civ 1037, Neuberger LJ made the following observations, relevant to deciding credibility in asylum appeals:

“28. Further, in many asylum cases, some, even most, of the appellant’s story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely

on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

"In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."

30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by ... Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background."

13. The Judge attached very little weight to Dr Verney's report on the basis that Dr Verney accepted the appellant to be a credible witness, whereas she did not agree that he is credible [31]. The judge has completely failed to consider Dr Verney's evidence that significant aspects of the appellant's claim were consistent with his knowledge of the behaviour of the Sudanese authorities. Where, as here, an appellant relies upon country expert evidence to specifically support aspects of his claim said to be implausible or incredible in the refusal letter, the judge is obliged to consider this when making the credibility assessment. Findings on credibility are informed (but not determined) by evidence of inherent plausibility. As Neuberger LJ said in HK "*the ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence*". Whilst a judge is entitled to reject expert evidence as unreliable, this judge has given no reasons for rejecting aspects of the report which addressed the plausibility of the events described by the appellant in the context of Sudan, as opposed to their general credibility.
14. The judge has erred in law in wholly failing to acknowledge or take into account the evidence from Waging Peace, which specifically addressed aspects of the appellant's account.
15. The judge attached no weight to the AKCF letter [25] without giving any reasons for this finding. The fact that there are no photographs

has been explained by the appellant yet the judge offers no reasons for rejecting this explanation.

16. The judge concluded that the letter from the Darfuri community in Wales ('DCW') was inconsistent with the appellant's own case [32]. This is a mistake of fact that has caused unfairness. The letter states that the appellant assisted Darfuris and this led him to flee to Sudan. The appellant's witness statement explains this in broadly similar terms "*I was accused of supporting the opposition groups because of my close links with the Darfuri students. My position became untenable and I did not want to continue working in Sudan*". The judge did not accept the appellant's detailed claim that he was involved with human rights activists and Darfuri students in his witness statement [20] and was satisfied that this was "*an attempt to shore up a weak asylum claim*". This is completely unreasoned. The judge has failed to engage with the detail of this aspect of the claim or the other evidence supportive of it such as power point slides and the DCW letter.
17. The judge has repeatedly failed to give reasons for rejecting key aspects of the appellant's evidence. The evidence is summarised and then followed by "*I do not accept this evidence is credible*" [see for example, 22, 28 and 29]. The judge has merely given a conclusion without providing reasons.
18. I accept that the First-tier Tribunal has given some reasoning for rejecting other aspects of the appellant's account, all of which I have not addressed above. However, at no stage has the judge considered the apparent plausibility of the appellant's account in light of the evidence provided by the country expert and Waging Peace. I am not confident that the decision would have been the same on the basis of the other reasons for rejecting the appellant's credibility. The errors I have focussed upon are sufficiently wide-ranging and fundamental to lead me to the view that the conclusion on credibility is vitiated by errors of law and unsafe. The decision must be remade entirely and *de novo*.

Decision

19. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
20. The appeal shall be remade by First-tier Tribunal *de novo*.

Directions

- (1) The appeal shall be reheard *de novo* by the First-tier Tribunal sitting in Stoke (TE: 2.5hrs) on the first date available. Arabic interpreter necessary.
- (2) 14 days before the hearing date the appellant shall file and serve (1) a condensed indexed and paginated bundle (to replace all previous bundles) containing only those documents relevant to the rehearing that are not contained in the SSHD's bundle, (2) a more detailed and

comprehensive skeleton argument that deals with the credibility and plausibility of the appellant's account by cross-referencing to pages in the condensed bundle.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
15 October 2015