



IAC-HW-AM-V1

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

Appeal Number: AA/03619/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19th November 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**S D
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No one

For the Respondent: Mr Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Gambia born on 11th November 1979. He appealed the Respondent's decision of 18th December 2006 to remove him as an illegal entrant from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 of the Immigration Act 1971. His appeal was heard by Judge of the First-tier Tribunal Cheales on 23rd April 2015. The appeal was dismissed in a decision promulgated on 13th May 2015.

2. An application for permission to appeal was lodged and was refused by First-tier Tribunal Judge Holmes on 8th June 2015. Permission to appeal was granted by Deputy Upper Tribunal Judge Bruce on 10th August 2015. The permission states that the Appellant's contention is that he is stateless. He states that he would not be granted Southern Sudanese nationality and he states that he attended the Southern Sudanese embassy in London which refused to recognise his nationality. The permission quotes paragraph 42 of the First-tier Tribunal Judge's decision which states "I believe that he would be accepted on return to South Sudan and is not stateless." The permission states that this has been put into the decision without reference to any of the evidence produced by the Appellant. The permission goes on to deal with the Appellant's child in the United Kingdom and refers to the point made by First-tier Tribunal Judge Holmes, that if the child and the child's mother are facing removal to Gambia, in those circumstances the Appellant could pursue contact with his son in that country.

The Hearing

3. The Appellant attended the hearing without a representative. He told me that he understands that this is an error of law hearing.
4. He submitted that the judge did not take into account what was before him and that at the First-tier hearing he had told the Tribunal he had spoken to the Embassies of South Sudan and Gambia and they had both said they would not grant him nationality.
5. I put to him that he had a previous asylum hearing in February 2007 in which he was found not to be credible and it was found that he is Sudanese. He said this was before Sudan was split into two different states.
6. I asked him if he has letters from the embassies stating that they will not accept him as a national but he has not. He said when he went to the South Sudanese Embassy he was told that because he had no ID card there was no proof that he was from South Sudan, so he was not granted nationality. He said he made an application while he was there but again he had nothing in writing to show the Tribunal. There was clearly no documentary evidence about these issues before the judge, only the Appellant's word.
7. The Presenting Officer made his submissions referring to the case of **KF (Iran) [2005] UKIAT 00109** on statelessness. He submitted that permission was granted in Mr Duru's case because it was found that the First-tier Judge had failed to make findings on a material fact. The Presenting Officer submitted that this Appellant is not stateless and that is a fact. In 2007 it was found that he is from Sudan and in 2014 it was again found that he is from Sudan.
8. He submitted that the Appellant states that he applied for South Sudanese citizenship but there is no evidence of this apart from his oral evidence.
9. I was referred to the 2007 determination in which the Appellant is found not to be credible and the 2014 decision in which he is again found not to be credible. He referred me to paragraph 42 of the 2014 decision which is quoted in the permission.

He submitted that all the judge states is that he believes the Appellant is not stateless and would be accepted on return to Southern Sudan. The Appellant now states that he will not be accepted in Southern Sudan but the Presenting Officer submitted that the judge has given adequate reasons for finding that the Appellant is not stateless and can be returned there.

10. The Presenting Officer submitted that the credibility findings are very strong. Even the expert, Mr Verney, makes it clear that the Appellant has not been honest about where he has been living. I was asked to consider the expert report at paragraphs 85 to 93. I was referred to the said case of **KF** about statelessness. This states that a finding that someone is stateless does not, of itself, determine whether he is a refugee. At paragraph 20 of that case the judge states:

“It is not always surprising that less than vigorous endeavours may be made by asylum applicants to obtain proof of nationality. Their endeavours to obtain nationality documents might prove successful. But to fail to assert the relevant nationality and the basis for it, to fail to seek the right documents, or to follow up a refusal with letters, or to seek further assistance, legal or NGO, in pursuing the claim or to produce to the asserted country of nationality those documents which are obtainable is to fall well below the minimum necessary for any claim of statelessness.”

This paragraph refers to an Appellant who has not been deprived of citizenship but claims that his country of nationality will not recognise him and makes it clear this is a very difficult basis on which to prove statelessness. The Presenting Officer submitted that that is the case here. This Appellant has not shown, even to the low standard of proof in asylum cases, that he is stateless and he has not shown that he is a refugee.

11. The Presenting Officer submitted that when the Appellant came to the United Kingdom, South Sudan was not in existence and did not come into existence until 2012. Since then he has made a fresh claim, stating that he will not be accepted into his country of nationality. I was asked to give considerable weight to the credibility findings in the 2014 First-tier decision. The Presenting Officer submitted that this man has a nationality and there is no material error of law in the First-tier Judge’s determination.
12. I spoke to the Appellant who stated that the expert, Mr Verney, is not from Sudan. He said that because of this Mr Verney had asked him the wrong questions. He said he was brought up in Darfur since he was 12 years old but was born in The Gambia. He said he has never been to South Sudan and has no one there. He said he came to the United Kingdom from Darfur and the Home Office is trying to return him to a country where he has never been and has no right to be a citizen. He submitted that as he has no evidence to prove citizenship, the Embassy has told him that he will not be granted citizenship. He said he made an application to the Embassy and got a tracking number but the First-tier Judge in 2014 did not consider this. He submitted that the judge did not consider all of the evidence which was before him. He submitted that that is clear, because he did not comment on it in his decision. He submitted that this is an error of law.

13. The Appellant then submitted that his ex-partner lives in Liverpool with his son and he has access to his son and will be unable to exercise this access if he is removed from the United Kingdom.
14. The Presenting Officer submitted that if I find there to be an error in the First-tier Judge's decision there are still the credibility issues to take into account and the Appellant should not be able to profit from lies. He submitted that because of these credibility issues the judge reached the only conclusion which he could have reached.
15. The Appellant submitted that he cannot afford a solicitor and is telling the truth. He said he came to the United Kingdom in 2006 and claimed asylum when he arrived in Leeds. He submitted that the Secretary of State has not told him what he can do to convince her that he is telling the truth.
16. I asked the Appellant if he pays money to his child's mother and he said he was paying £50 a month but his ex-partner said that was not enough so he is not paying anything now. He said he has a court order allowing him to see his child.
17. I pointed out that his ex-partner and the child may have to go to The Gambia as she has no right to be in the United Kingdom. I pointed out to him that if he goes to South Sudan he can visit his child in The Gambia. He said he cannot get citizenship in South Sudan.

Decision and Reasons

18. At paragraph 6 of the 2014 First-tier decision reference is made to the refusal letter, dated 18 December 2006, which states that the Appellant has admitted that he is a black Sudanese person from the Dinka tribe and he can relocate and live amongst his own tribe in South Sudan. The first-tier judge correctly refers to the determination promulgated in February 2007 in which it was accepted that the appellant is a Sudanese national of the Dinka tribe and he lived in the Darfur region of Sudan from 1991 until he came to the United Kingdom.
19. In the 2014 First-tier decision the expert report by Peter Verney is referred to. The judge gives weight to Mr Verney's report. Mr Verney clearly finds there to be serious credibility issues in the appellant's account.
20. The First-tier Judge then refers to the 2007 determination and the adverse credibility findings therein. At paragraph 35 the judge states that not only does the judge in 2007 find the Appellant's credibility to be damaged, so does the expert, Mr Verney, who states that the Appellant has not been honest about where he has been living. At paragraph 42, because of a lack of credibility the First-tier judge clearly finds that the Appellant is not stateless and he has given proper reasons for this finding.
21. The appellant's oral evidence that he has been rejected by 2 Embassies for citizenship has not been supported by any documentary evidence.
22. The credibility issues have been properly considered by the First-tier Judge. There is nothing to suggest that the First-tier judge has not considered all the evidence before him. He does not require to list all the pieces of evidence which he has considered

and it is clear that he finds, not only from the previous determination but also from the expert report, that the Appellant has not been telling the truth and he should not be given any credit for his lies.

23. The judge has come to his decision because of a lack of credibility. It is not an error to state that, based on what was before him, he believes the Appellant can be returned safely to South Sudan. This statement has been properly explained. There is no error of law in the First-tier judge's decision.
24. With regard to Article 8 and the Appellant's child, the child's mother is a Gambian national with no settled status in the United Kingdom and may well be being returned to The Gambia with the child. There is no error when the judge states that the Appellant can go to see his ex-partner and child in The Gambia and maintain contact with them through other means if he returns to Southern Sudan. The judge finds there to be no compelling circumstances in this aspect of the claim and states that any private life has been established while the Appellant's status in the United Kingdom was precarious and that any interference with his private life would be proportionate.
25. Although the Appellant states that he is stateless it is clear that the judge does not find that to be the case. When the said case of **KF** is considered the judge is correct in this finding based on what was before him.

Notice of Decision

26. There is no material error of law in the First-tier Judge's decision.
27. The decision of the First-tier Tribunal promulgated on 13th May 2015 must stand.
28. Anonymity has been directed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray