



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

Appeal Number: AA023582015

THE IMMIGRATION ACTS

**Heard at: Manchester
On 25th May 2016**

**Decision Promulgated
On 27th May 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**AHAH
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Schwenk, Counsel instructed by AJO Solicitors
For the Respondent: Mr Harrison, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Sudan born in 1968. On the 31st October 2013 he arrived in the United Kingdom and sought asylum. His application was rejected and on the 27th January 2015 the Respondent made directions for his removal from the United Kingdom

under s10 of the Immigration and Asylum Act 1999. The Appellant appealed and in a determination dated 3rd July 2015 the First-tier Tribunal (Judge Nicol) dismissed his appeal on asylum, humanitarian and human rights grounds. The Appellant now has permission to appeal against Judge Nicol's decision.

2. The basis of the Appellant's claim was that he is a member of the Berti clan of the Darfur region in Sudan. He gave an account of past persecution for reasons of his ethnicity and imputed political opinion which had been rejected by the Respondent. Although the dispute between the parties about these historical events was still live, the real issue before the First-tier Tribunal was whether or not the Appellant was in fact Berti as he claimed: AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056, MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC). If he could establish, on the lower standard of proof that he was Berti, then his claim would succeed, notwithstanding any adverse credibility findings that might arise from the rest of his account.
3. In order to establish that he was Berti the Appellant relied on three pieces of evidence:
 - i) His own testimony, including the consistent, 'correct' answers that he had given the Respondent when interviewed;
 - ii) The live evidence and sworn statement of Ali Bashir Mortada Ahmed, a recognised refugee who is accepted to be from Darfur and from the Berti clan, to the effect that he personally knew the Appellant when they were both living in Obdurman in 2008-2011;
 - iii) An expert report by Mr Peter Verney, who interviewed the Appellant for 90 minutes in April 2015. Mr Verney concludes that the Appellant gave "convincing and consistent" evidence about his ethnicity. He gave information that would most probably not be known to persons outside of the Berti tribe. Mr Verney believes that on return to Sudan the Appellant would "certainly recognise him as a non-Arab Darfuri" and that he would be at risk as a result
4. The First-tier Tribunal rejected the Appellant's account in its entirety and dismissed the appeal.

Errors of Law

5. The hearing before me was not long. That is because Mr Harrison for the Respondent quite properly declined to make any defence of this

determination bar the obligatory reliance on the 'Rule 24' response.

6. I have no hesitation in setting this decision aside for the following errors of law.
7. There has been a failure to make clear findings on the evidence of the witness Mr Mortada Ahmed. He gave live evidence before the Tribunal. This gentleman had been recognised as a refugee and no reasons had been advanced as to why his credibility should not be accepted. The determination records that he attended the hearing, but no evaluation of his evidence is made, save the suggestion, at paragraph 32, that the Appellant may have 'learned' what to say from this witness in order to fool Mr Verney:

“Without in any way suggesting deliberate collusion, it is possible that many of the matters could have been discussed between them and experiences compared”.

That does not amount to an evaluation of Mr Mortada Ahmed's evidence. Nor, with respect, does it make any sense. If the Tribunal was not alleging deliberate collusion it is hard to understand the point: was the Tribunal suggesting that the Appellant had “faked” being Berti when talking to Mr Mortada Ahmed in Obdurman market in 2008? The Tribunal was not obliged to accept the evidence of this witness but if it considered that the witness was mistaken, misled or lying it should have said so, and clear reasons given for those conclusions.

8. The approach to the report of Mr Verney is similarly flawed. Again the Tribunal was not obliged to accept this evidence, but if it were to be rejected, or only little weight placed upon it, clear reasons had to be given why. In this case the reasons that are given are unsustainable. Mr Peter Verney is a recognised expert on the Sudan who has, he notes in the introduction to his report, given evidence to this Tribunal in numerous appeals including a number of country guidance cases. Most recently his evidence was uncritically accepted in its entirety by the Upper Tribunal in MM. Given this pedigree it is unclear why the First-tier Tribunal describe him, at paragraph 27, as being someone “who claims to be” a country expert on the Sudan. The Tribunal goes on to criticise Mr Verney for taking the Appellant's evidence at “face value”, and not contemplating that the Appellant may have deliberately sought to deceive him by learning things about Berti culture from the internet. This is factually incorrect. As Mr Verney states in terms in his report, he is very much alive to the possibility that those claiming to be Berti are lying: he recognises that there are “significant numbers of false applicants” [199] and that amongst those he has interviewed personally, less than half manage to convince him that he should write a positive report [200]. Mr Verney

records that the Appellant was able to answer questions about Berti culture which would not be known to persons outside of that ethnic group. For the Tribunal to suggest that this internationally recognised country expert was just recording 'what he was told' without exercising any of his own critical faculties is a conclusion unsupported by the report itself and an error akin to that identified - in the context of medical reports - in R (on application of Minani) v SSHD [2004] EWHC 583 (Admin).

Decisions

9. The determination of the First-tier Tribunal contains errors of law and it is set aside.
10. Having regard to the extent of the fact-finding required, the parties agreed that the decision in the appeal should be remade in the First-tier Tribunal.
11. Having regard to the fact that this is a protection claim I make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

"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 his family. This direction applies both to the Appellant and the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings".

Upper Tribunal Judge Bruce
25th May

2016