



IAC-AH-KEW-V1

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

Appeal Number: AA/03831/2015

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower, Decision & Reasons Promulgated  
Birmingham  
On 21<sup>st</sup> January 2016**

**On 19<sup>th</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR A A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss H Naz (Solicitor)

For the Respondent: Mr D Mills (HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge O'Hagan promulgated on 8<sup>th</sup> June 2015, following a hearing at Birmingham Sheldon Court on 27<sup>th</sup> May 2015. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Sudan, who was born on 10<sup>th</sup> August 1994. He appealed against a decision of the Respondent dated 20<sup>th</sup> February 2015 refusing his claim for asylum and humanitarian protection and giving directions for his removal.

## **The Appellant's Claim**

3. The Appellant's claim is that he is a Sudanese national of Berti ethnicity, had never been to school, was taught to read the Koran, and had helped his father with farming since he was 5 years of age. He had married a woman called Fany, and the Janjaweed had attacked his village and shot his cousin and the family had fought back. The Appellant's uncle had advised that the Appellant leave the country and had made arrangements for him.
4. The refusal letter stated that there were gaps in the Appellant's knowledge because he incorrectly named the currency and the international dialling code for Sudan. He was unable to remember the first line of the national anthem. He was unable to remember when Sudanese Independence Day was celebrated. These matters should have been known to him notwithstanding the fact that he was uneducated. It was not accepted that he was a member of the Berti clan because of his lack of knowledge of the customs, traditions and history of the tribe. He had also travelled through Italy and France and not made an application for asylum there and this too affected his credibility.

## **The Judge's Findings**

5. The judge observed that it was common ground that the Berti Tribe are persecuted as a minority tribe in Sudan. If the Appellant could show that he belonged to the Berti Tribe then he could show he was at risk and there would be insufficiency of protection for him in that country. The judge did not accept that the Appellant was able to show on the lower standard that the Appellant belonged to the Berti Tribe. The established authorities (see paragraph 33) therefore meant that the Appellant would not be at risk in these circumstances. He established that it was also concluded that neither involuntary returnees nor failed asylum seekers nor persons of military age were at real risk on return to Khartoum (see paragraph 33).
6. The judge went on to express himself in terms that,  
"I am not considering whether the Appellant is a non-Arab Darfuri. In that respect, I entirely agree ... that it was for the Secretary of State, and is also for me, to consider the claim for asylum put forward by the Appellant. It is his case that he is a member of the Berti Tribe. It is that which I have to consider." (paragraph 34)
7. The judge went on to say that the fact that the Appellant spoke Arabic was a neutral factor in this case (see paragraph 35). However, the interview answers that the Appellant gave were "hopelessly inconsistent" and the judge set these out. The Appellant was inconsistent in naming his wife or when he last saw her. He was inconsistent as to when the Janjaweed

attack took place on his village. He was inconsistent as to whether the uncle to whom he had fled was a maternal or paternal uncle. He was also inconsistent as to whether he fled in a lorry or a livestock truck.

8. The judge went on to say that he would recognise that “people who have genuinely experienced trauma will sometimes give fragmented and seemingly inconsistent accounts of the traumatic events” and that the benefit of the doubt should be given here (see paragraph 40). Even so, the account given could not possibly be true (see paragraph 42). The Appellant had given no satisfactory explanation for the fact that he did not claim asylum in Italy (paragraph 43). The judge went on to consider paragraph 276ADE and found that the Appellant could not succeed under this provision (paragraph 45). Consideration was given to whether the Appellant qualified under Appendix FM (paragraph 47) and this too did not assist the Appellant. The Appellant failed in freestanding Article 8 jurisprudence (paragraph 49 to paragraph 52).
9. Finally, the judge gave consideration to the public interest requirement in paragraph 117B and held that the Appellant could not succeed in the totality of the circumstances in this case (see paragraph 53).
10. The appeal was dismissed.

### **Grounds of Application**

11. The grounds of application state that the judge erred in failing to make a finding as to whether the Appellant was a non-Arab Darfuri. The grounds also allege that the judge should have made various findings as to the risk to be faced by the Appellant on return as a failed asylum seeker.
12. On 1<sup>st</sup> July 2015, permission to appeal was granted.
13. On 13<sup>th</sup> July 2015, a Rule 24 response was entered by the Respondent Secretary of State making three substantial points. First, that the Appellant claimed to be a member of the Berti Tribe which is a non-Darfuri Tribe and that the claim was rejected and adequate reasons were given for disbelieving this claim. Second, that although the judge said he was not considering whether the Appellant was a non-Arab Darfuri, the fact was that this was an inherent part of the claim of being a member of the Berti Tribe, and this had been rejected. Third, the Appellant did not advance an alternative claim not to be a Berti Tribe member or that he is a member of some other non-Arab Darfuri Tribe.
14. At the hearing before me on 21<sup>st</sup> January 2016, Miss Naz, appearing on behalf of the Appellant, began by saying that she would adopt the grounds of application and argued that I should set aside the decision and remit the matter to the First-tier Tribunal for a reconsideration.
15. For his part, Mr Mills submitted that at its highest, the claim put forward by the Appellant rested on the judge’s rather cryptic statement that, “I am not considering whether the Appellant is a non-Arab Darfuri” (paragraph 54). However, Mr Mills submitted that this statement has to be read in conjunction with the one that immediately follows it where the judge

states that, "... it was for the Secretary of State, and is also for me, to consider the claim for asylum put forward by the Appellant. It is his case that he is a member of the Berti Tribe. It is that which I have to consider" (paragraph 34). The membership of the Berti Tribe is, of course, a membership of a persecuted minority tribe in Sudan.

16. The Appellant was not putting forward any other claim except for the fact that he was indeed a member of the Berti Tribe. The judge so stated himself by saying, "I must and shall confine myself to the issue of whether the specific claims that he has made are established to the evidential standard applicable in cases of this kind" (paragraph 34).
17. The judge then, in fact, goes on to say that the fact that the Appellant spoke Arabic rather than a language specific to the Berti Tribe, was not to be taken against him. The judge even went on to say that this "does not undermine his claim that he is a member of the Berti Tribe." He added that it did not support his claim, but the fact that he spoke Arabic "is a neutral factor" (paragraph 35).
18. With respect to consideration specifically of the claim that the Appellant did put forward, the judge went on to analyse that and to say that "the Appellant had significant gaps in his knowledge about the history and culture of the Berti Tribe" (paragraph 36). He then made a specific finding that, "the linguistic analysis establishes that he is from South Darfur, but does not establish that he is a member of the Berti ..." (paragraph 37).
19. The judge then considered the Appellant's own evidence and observed that this has "a number of unsatisfactory features which, cumulatively, led me to the view that he was not telling the truth" (paragraph 38). He went on to conclude that the Appellant "during his interviews was hopelessly inconsistent" (paragraph 39).
20. Finally, the judge observes that the Appellant does not discharge the burden of proof (see paragraph 44). As far as Ground 3 of the claim is concerned, this is based upon the country situation, and it is entirely misconceived. The OGN is about non-Arab Darfuris, and the OGN is quite clear in what it says. Therefore, Ground 3 simply is unarguable.
21. In reply Miss Naz said that the Appellant had answered all the questions correctly. If there were gaps in his knowledge about the culture it was because he was traumatised. She referred to a skeleton argument before the First-tier Tribunal Judge. She went on to submit that the judge failed to give the Appellant the benefit of the doubt. The issue of the non-Darfuri was vital to the claim and the judge had glossed over it.
22. However, she said that the greatest problem arose from the way in which the judge had dealt with the analysis (at paragraph 34) by observing that, "I am not considering whether the Appellant is a non-Arab Darfuri." The Appellant's precise claim was exactly to do with the fact that he was at risk because he was a non-Arab Darfuri.

### **No Error of Law**

23. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside that decision. My reasons are essentially those that had been advanced by Mr Mills in his careful submissions before me. The high point of this claim is indeed the judge's cryptic statement at, "I am not considering whether the Appellant is a non-Arab Darfuri" (paragraph 34), but that statement is entirely comprehensible and rational in its analysis when it states also that the judge is fundamentally concerned, as the Secretary of State was concerned, to determine the claim that was actually put forward by the Appellant. The claim put forward by the Appellant is, as the judge said, "it is his case that he is a member of the Berti Tribe" (paragraph 34).
24. The Appellant did not put forward any other alternative claim. Had the Appellant done so the judge would have considered it. Thereafter, the judge gave the benefit of the doubt to the Appellant where he could, and held some matters, such as the use of the Arabic language, to be entirely neutral, and one that did not undermine the Appellant's claim.
25. In short, the determination of the judge is careful, comprehensive, and sensitive to the claims of the Appellant, and it is determined at the appropriate level of proof, and is entirely sustainable as a matter of law.

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

### **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 Juss

13<sup>th</sup> February 2016

### **TO THE RESPONDENT** **FEE AWARD**

As I have rejected the claim, there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Juss

13<sup>th</sup> February 2016