



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

Appeal Number: PA/02870/2015

THE IMMIGRATION ACTS

Heard at Bradford

On 25th August 2017

**Decision & Reasons
Promulgated**

On 6th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appellant appeared in person assisted by Mr R Taffell
(McKenzie friend)

For the Respondent: Mrs Petterson, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant is a national of Sudan (born [] 1994). He claims to have arrived in the UK, via Italy and France, on 28th July 2015. He claimed asylum the same day. His claim for asylum/humanitarian protection was refused by the Respondent on 15th November 2015.
2. The Appellant appealed against that decision and his appeal was heard before the First-tier Tribunal (Judge Watson) on 24th January 2017. The appeal was dismissed on both asylum and humanitarian protection grounds. No Article 8 ECHR claim was made.
3. The Appellant has been granted permission to appeal against the decision of the First-tier Tribunal. The grant of permission appears to be wider than the grounds seeking permission and the relevant part of the grant says as follows:
 - “3. The grounds assert that the issue was essentially as to whether the appellant was from the Bargo tribe and inadequate reasons had been given for rejecting the appellant’s claim that he was from that tribe and appropriate weight should have been placed on the evidence from Hasan El-Nour.
 4. The judge considered the evidence before him and accorded no weight to the letter signed by Mr El-Nour as he did not attend the hearing and the appellant stated that he had not met him. It was evident from [10] of the decision that the judge did not address his mind as to whether it was possible that another member of the organisation had met the appellant and that Mr El-Nour was signing in his capacity as director as opposed to his personal capacity.
 5. The judge considered the appellant’s own evidence as to his tribal connection. The appellant had failed to establish before the respondent that he was from the Bargo tribe but there was no consideration in the body of the decision as to the evidence given at interview on his ethnicity. Emphasis was placed at [12] as to inconsistencies as to the appellant’s claim without there being a focus on the evidence produced with regard to his ethnicity.
 6. It is therefore arguable that the decision and reasons display an error of law.”

Permission having been granted, the matter comes before me to decide initially whether the decision of the FtT discloses an error of law requiring it to be set aside.

Error of Law Hearing

4. Before me, the Appellant attended unrepresented. He was assisted by Mr Taffell who appeared as a McKenzie friend. In addition a letter from BIASAN (Bradford Immigration and Asylum Support and Advice Network) was served upon the Tribunal. This set out that the Appellant would not be legally represented at the error of law hearing but that reliance was placed upon the grant of permission given by Judge Scott-Baker, together with a submission that the decision of Judge Watson was unsafe. It concluded by stating that it was hoped that the finding of the Upper Tribunal would be that an error of law was found, which would enable the Appellant to have a re-hearing and be represented by professional legal representation. It would also enable his witnesses to attend the new hearing.
5. Mrs Petterson attended on behalf of the Respondent.
6. Because the Appellant was unrepresented, I record that every opportunity was afforded to the Appellant to ensure that his McKenzie friend was able to put forward all points which may assist the Appellant's cause.
7. I heard submissions from Mrs Petterson. She robustly defended the FtT's decision. She pointed out that the Appellant had legal representation at the original hearing and had presented his witnesses. She submitted that the judge had, with good reason, found those witnesses to be discrepant in their evidence. Further, there were more than sufficient reasons given in the decision to show that the Appellant's credibility was deficient. The judge had correctly identified that the task before him was to decide the ethnicity of the Appellant. Not only had all the evidence been taken into account, but the grounds had failed to address the fundamental inconsistencies in the Appellant's account. The witness who attended the hearing and the written evidence that has been submitted did not assist.
8. She accepted that the decision could be categorised as a brief one but said that there was only one central issue namely whether the Appellant was a member of the Bargo tribe or not. The judge had dealt fully with that issue and on a proper reading of the decision it was plain that the Appellant could be in no doubt as to why the FtT had found him not credible. The grounds simply amounted to a disagreement with the decision and the appeal should be dismissed.

Background

9. The background to this appeal is that the Appellant claims to be a member of the Bargo tribe from the Abuja district of Al-Jazeera in Sudan. He claims that his brother is an active member of Justice and Liberation and has been since 2004. The Appellant's claim is that he was visited at his home by a group of men and was asked to join the above movement. He declined to do so, but did give a donation.

10. Around a month later, three members of the security services visited him at his home, took him away and detained him for five days at a police station. During this time he was interrogated and beaten. After denying any involvement in any resistance movement he was released on condition of reporting and not leaving the area. He said he remained at the family home for twenty days but did not report as set out in his release conditions. Instead he fled to North Sudan and from there travelled to Libya. From Libya he went by boat to Italy and then by train to France. He remained in France for one month but made no claim to asylum there. He entered the UK clandestinely by train.
11. The Respondent disbelieved the Appellant's account, finding that although the Appellant's responses at interview were consistent with the country information about Sudan, nevertheless his level of knowledge of the Bargo tribe was lacking.
12. The grounds seeking permission can be distilled into saying that the FtT failed to give adequate reasons for the finding that the Appellant is not from the Bargo tribe. In expanding on this, the grounds state that the FtT's assessment that the Appellant was vague in his asylum interview was incorrect. The FtT did not identify which answers were vague. A full reading of the interview shows the Appellant answered all questions fully. Additionally the FtT was wrong to accord no weight to a letter produced from Mr Hasan El-Nour of the Bargo community in the United Kingdom. Equally the judge was wrong to place no weight upon the evidence of the witness Mr Yaqoob who attended the hearing to support the Appellant's claimed ethnicity.

Error of Law Consideration

13. The challenges raised to the FtT's decision essentially amount to saying that the reasons given for dismissing the appeal were inadequate and based on a failure to take into account all the evidence put before it. I do not find this to be the case and I now give my reasons for this finding.
14. The FtT has identified that the central issue before it was whether the Appellant was a member of the Bargo tribe. It has always been accepted that the Appellant is from Sudan. It is unsurprising therefore that he was able to answer questions consistent with the country information.
15. In coming to its decision the FtT has clearly focused on the core of the Appellant's claim. At [12] the judge points out discrepancies in the core claim including an inability on the part of the Appellant in interview to name the police station where he said he was held for five days. The judge noted that by the time the Appellant's witness statement was produced at the hearing, he was able to recall the name. The Appellant's explanation for his inability to originally name the police station where he was held was to say that there were interpreter difficulties at the

interview. The judge found, as he was entitled to do, that he did not accept this explanation and that it detracted from the Appellant's overall credibility.

16. The judge took account of the fact that in his interview the details of the Appellant's membership of his clan was lacking. For example he was unable to pinpoint that Fur is the tribal language of the Bargo. His knowledge of Bargo traditions appeared superficial. It is incorrect to say that the judge did not take account of all the evidence given at interview with regard to the Appellant's ethnicity. I accept that the decision focuses on the inconsistencies in the Appellant's claim but I see no evidence that the judge has failed to adequately engage with the issue which was before him. Paragraph [12] of the decision sets out fully the judge's reasons for not accepting the Appellant's claim.
17. Criticism is made because the judge failed to accord weight to the letter produced from Mr El-Nour of the Bargo community. I find that criticism unfounded. The judge was entitled to say that a letter from a signatory who had not met the Appellant and who did not attend the hearing to be examined on the content should be afforded little or no weight. The letter claims that the Appellant was tested on his knowledge of the Bargo tribe. The author of the letter, however, does not even name who it was who "tested" the Appellant. The weight to be given to each piece of evidence is a matter for the judge and I find good reasons have been given as to why he could place no weight on this particular piece of evidence.
18. In referring to the letter in the grant of permission, Judge Scott-Baker stated that the FtT judge "did not address his mind as to whether it was possible that another member of the organisation had met the appellant and that Mr El-Nour was signing in his capacity as director as opposed to his personal capacity." Nowhere in the grounds can I find that this has been raised as a point by the Appellant. Consequently, I do not consider that this merits further consideration.
19. Likewise so far as the oral evidence of Mr Yaqoob is concerned, the judge noted inconsistencies in his evidence when compared to that of the Appellant. The judge has set out his reasons in [11] outlining those inconsistencies. The grounds do no more than simply raise a challenge that the evidence should have been accepted. They do not however address the discrepant evidence as set out by the judge.
20. Altogether I find I am satisfied that the findings of the FtT were ones which were fully open to that tribunal to make. The FtT found that on the evidence before it, the Appellant had failed to show on the lower standard of proof, his claimed membership of the Bargo tribe. The grounds amount to no more than a disagreement with the FtT's decision.
21. Accordingly I find no material error in the FtT's decision. The decision shall stand and this appeal is dismissed.

Notice of Decision

This appeal is dismissed.

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 his 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
September 2017

C E Roberts

Date

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Deputy Upper Tribunal Judge Roberts