



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03642/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 24th July 2018

Decision & Reasons Promulgated
On 21st August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

ALAMEEN [I]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown, Counsel

For the Respondent: Mr Diwnycz

DECISION AND REASONS

1. The Appellant is a citizen of the Sudan born on 5th May 1988. The Appellant claims to have left the Sudan on 28th September 2014 and travelled across Africa and thereafter onward to Italy and France before arriving in the UK on 29th June 2015. He claimed asylum on arrival, claiming to have a well-founded fear of persecution in Sudan on the basis of his race. That application was refused by Notice of Refusal of the Secretary of State dated 31st March 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Meyler sitting at Manchester on 15th January 2018. In her decision and reasons promulgated on 24th January 2018 the Appellant's appeal was dismissed.
3. Grounds of Appeal were lodged to the Upper Tribunal and on 20th March 2018 First-tier Tribunal Judge Kinnell refused permission to appeal. Renewed grounds were lodged on 9th April 2018. On 22nd May 2018 Upper Tribunal Judge Plimmer granted permission to appeal. Judge Plimmer considered that it was arguable the First-tier Tribunal had failed to take sufficient account of the country background expert report prepared by Dr Verney in particular:-
 - (i) That the Appellant had made it clear that after his mother had died and he was raised by his elder sister in Saudi Arabia. His maternal uncles and elder brother also lived there, and as such paragraph 186 of the report must be read in the light of this.
 - (ii) The Appellant spoke sufficient Goran to convince Dr Verney that it was unnecessary for this to be tested any further unless disputed.
 - (iii) The note on sources to be found at paragraphs 282 to 292 of the report.
 - (iv) That the Appellant would be recognised as a non-Arab Darfuri upon return to the Sudan.
4. No Rule 24 response appears to have been served. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Brown. The Secretary of State appears by his Home Office Presenting Officer, Mr Diwnycz.

Submissions/Discussion

5. Mr Brown submits that the error of law arises in a procedural unfairness that has arisen as a result of the failure to analyse properly the Appellant's ability to speak Goran. He notes the methodology technique for assessing this was considered by Mr Verney and is referred to at paragraph 39 of the judge's decision. He contends, as do the handwritten Grounds of Appeal, that the Tribunal had evidence from Peter Verney and from a witness, Mustafa Sulman Ali that the Appellant was from the non-Arab Darfuri Tunjur and Goran tribes. The Appellant contending that his father is from the Tunjur tribe and his mother from the Goran tribe. It was submitted that a recording of the Appellant speaking Goran at the interview with Peter Verney was available but was not played, and in failing to use this recorded evidence there was a material error of law that led to the judge's decision being tainted.
6. Mr Brown submits that if there is uncertainty as to the evidence this could have been explained particularly as the judge had asked questions. He noted that the Appellant's case was that he had been brought up by his elder sister and that she spoke Goran and if ethnicity was the key then the Tribunal must be careful of the evidence going to this central issue. He submits that the judge does not have regard to the history and the timeline and submits that the failure to consider the methodology impacts upon the

judge's findings at paragraphs 40 and 41. He further submits that it is appropriate in this case that the matter goes back for clarification relating to the Appellant's ability to speak Goran and if necessary for Dr Verney to give oral testimony. He suggests that the matter rather unusually be referred back to the judge who originally heard the appeal.

7. Mr Diwnycz submits that Dr Verney's evidence has been seriously attacked by the Home Office and that the judge dealt with the evidence that was before her. There can be no criticism, he submits, for the manner in which the judge has dealt with the evidence and if the report is ambiguous that is no fault upon the judge or the Secretary of State.
8. In brief response Mr Brown submits that if there is a case of ambiguity then the Appellant must be given a fair opportunity to have the issue clarified. The Appellant could have provided evidence regarding the methodology by which tribal ethnicity was assessed but he was not asked. He submits that there is sufficient evidence set out in the grounds to conclude that the Appellant is a non-Arab Darfuri who would consequently be at risk if returned to the Sudan.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. This appeal turns on a very narrow point, namely whether or not the methodology considered and expressed with regard to the evidence given by Dr Verney as to whether or not the Appellant was or was not of the Goran tribe has been properly

examined. I am satisfied that there may well have been a procedural unfairness to the extent that it is sufficient to set aside the decision of the First-tier Tribunal Judge solely so far as it relates to the assessment that has been carried out as to whether or not the Appellant is or is not a member of the Goran tribe. The reasons I reach this decision - and I emphasise this is in no way a criticism of the First-tier Tribunal Judge who was doing the best she could under the evidence that was presented to her - is that there was a recording of the speaking of Goran at the interview with Peter Verney that was available but was not played, and that there is an ambiguity in Dr Verney's report, in particular I note paragraphs 190 to 210 and if the evidence shows that the Appellant does speak Goran then this would impact upon the decision.

12. Solely, consequently on the basis that there may well be a procedural unfairness which if looked at again may lead to the judge finding that the Appellant is a non-Arab Darfuri which, presumably, would lead to a finding that he is at risk on return, I find that there is a material error of law and set aside the decision of the First-tier Tribunal Judge.
13. In such circumstances I agree with the suggestions made by both legal representatives that the correct approach is to remit the matter back to the First-tier Tribunal to be heard by Immigration Judge Meyler, restricted solely to the issue as to whether or not the Appellant is or is not a member of the Goran tribe. I emphasise to the Appellant that the fact that this matter is sent back for rehearing does not mean necessarily that Judge Meyler will come to a different decision to that that she has previously come to but it is important that the evidence that is available is fully considered and before her in a way that it was not when she last heard the appeal.

Decision and Directions

The decision of the First-tier Tribunal Judge contains a material error of law and is set aside. The following directions are to apply.

1. That on finding that there is a material error of law the decision of the First-tier Tribunal is set aside and the matter is remitted back to the First-tier Tribunal sitting at Manchester on the first available date 42 days hence.
2. That the remitted hearing is to be reserved before Immigration Judge Meyler and is to be restricted solely to the issue as to whether or not the Appellant is or is not of Goran ethnicity.
3. That there be leave to the Appellant if so advised:-
 - (a) To obtain an up-to-date report from Dr Verney
 - (b) To call Dr Verney to give evidence
 - (c) To provide such further subjective and/or objective evidence in support of his contentions that he is a member of the Goran tribe

Such evidence to be filed and served at least seven days prior to the restored hearing.

4. That there be leave to the Respondent to file and/or serve such further evidence upon which they seek to rely at least seven days prior to the restored hearing.
5. The restored hearing do take place at the Manchester Piccadilly Centre with an ELH of three hours.
6. That the Appellant's legal representatives do notify the Tribunal within seven days of receipt of these directions as to whether an interpreter will be required at the restored hearing and if so with details of the language required and in particular as to whether an Arabic (North African) language interpreter is sufficient.

No anonymity direction is made.

Signed

Date: 13 August 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date: 13 August 2018

Deputy Upper Tribunal Judge D N Harris