



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11886/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 27<sup>th</sup> April 2018  
Oral Decision

Decision & Reasons Promulgated  
On 17<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR A M A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jafar, Counsel instructed by UK Immigration Lawyers & Advocates (London)  
For the Respondent: Mr Magur, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sudan whose date of birth is recorded as 12<sup>th</sup> April 1988. He appeals, with permission, the decision of First-tier Tribunal Judge Dean, who in a decision, following a hearing on 14<sup>th</sup> December 2017, dismissed the Appellant's application for international protection as a refugee. Although there were a number of grounds, in essence the Appellant complains that there were inadequate and irrational reasons given in respect of the adverse credibility findings with respect to the Appellant's political activities in Sudan and that the approach to the sur place activities was wrong in law.

2. After some discussion, Mr Magur, quite fairly conceded in respect of the sur place activities that the judge had asked herself the wrong question. The question was not the extent to which the Appellant was politically active during the course of the sur place activities, the question that the judge had to address was how, on the basis of the evidence, which included photographs, videos, (him being visible on websites and the like), he would be perceived by the authorities in Sudan were he to be returned. Because that question was not asked and not properly addressed, the finding overall that the Appellant would not be at risk on return contains an error of law and is material, such that the decision of the First-tier Tribunal cannot stand.
3. What then arose was whether what was to be remitted to the First-tier Tribunal for reconsideration should be limited to the sur place activities, or to all aspects of the appeal. Mr Magur for the Secretary of State submitted that there were two discrete parts to this appeal and that the findings in respect of the Appellant's activities, or lack of them in Sudan were well-reasoned, or at least sufficiently reasoned, such that those should stand.
4. There is, I observe, in paragraph 11 an interesting finding in the last sentence by the judge in which she says, "I find the Appellant has not demonstrated to the required standard that he was persecuted solely on grounds of his ethnicity while he lived in Khartoum". I simply make that observation as an aside, no-one raised anything arising from it, but I raise it for the benefit of the judge. It may be possible that there can be other reasons why a person is at risk. Be that as it may, Mr Jafar took me, with some care, through the Decision. The judge found against the Appellant for a number of reasons. Evidence was called and heard from Mr Sharafedin. He was, at the time of giving his evidence, the Secretary-General of the Justice and Equality Movement (JEM) in the UK. His evidence was that the Appellant had been an active member of JEM since 2013.
5. At paragraph 15 of her judgment the judge said:

*"Moreover, Mr Sharafedin's letter is dated 10 April 2017 but in that letter, he states that they granted the Appellant full JEM membership on 22 November 2017."*
6. The judge then went on to say at paragraph 16:

*"Looking at this evidence in the round, I find that the letter from Mr Sharafedin can be given little evidential weight in establishing the Appellant's claimed political activities because it contains a material discrepancy as identified in paragraph 15 above"*.
7. That part of the evidence has to be seen in the context of earlier findings made by the judge with respect to how Mr Sharafedin had communicated with Sudan by telephone when she felt that if there were real concerns about secrecy then encryption would have been the preferred option and she makes reference to Viber and WhatsApp and finds against the Appellant's evidence as a whole that the fact that Mr Sharafedin did not use such undermines his evidence.
8. What she did not do however was to make the finding as to whom Mr Sharafedin was. His evidence was that he was Secretary-General of the organisation. If he were

Secretary-General then one would have thought that significant weight would be given to what he had to say, but as Mr Jafar submitted there is no finding as to his status. Further, and importantly, the judge does not appear to have taken into account the correction made by Mr Sharafedin in his witness statement at paragraph 3 that there is a typing error in the letter. It was open to the judge, of course, to reject that, but she needed to consider it, which she did not do.

9. There are, I appreciate, a number of discrepancies properly identified by the judge in respect of length of time, periods of detention and the like, but as Mr Jafar rightly points out the judge constantly referred to looking at evidence in the round which, of course, she was bound to do, and one cannot know the extent to which one part of the evidence and the findings that follow infect the findings that come later.
10. In the circumstances, given that this matter would be remitted to the First-tier Tribunal in any event, I am persuaded by Mr Jafar that all matters should be at large and so the decision is as follows

### **Decision**

The decision of the First-tier Tribunal contained a material error of law.

The decision of the First-tier Tribunal is set aside.

The matter is remitted to the First-tier Tribunal to be heard afresh at Taylor House with no preserved findings.

### **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

Date: 15 May 2018



Deputy Upper Tribunal Judge Zucker