



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

Appeal Number: PA/00553/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 20th December 2019**

**Decision & Reasons Promulgated
On 9th January 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MMB

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms. H Aboni, Home Office Presenting Officer

For the Respondent: Mr. V Madanhi, CB Solicitors

DECISION AND REASONS

1. As this a protection claim, it is appropriate that an anonymity direction is made. Unless and until a Tribunal or Court directs otherwise, MMB is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant in the appeal before me is the Secretary of State for the Home Department (“SSHD”) and the respondent to this appeal is MMB. However, for ease of reference, in the course of this decision I adopt the parties’ status as it was before the FtT. I refer to MMB as the appellant, and the Secretary of State as the respondent.
3. The appellant is a national of Sudan. He arrived in the United Kingdom in August 2016 and claimed asylum. His claim was refused by the respondent for the reasons set out in a decision dated 7th December 2017. His appeal against that decision was heard by First-tier Tribunal Judge Phull (“the judge”) and allowed for the reasons set out in a decision promulgated on 17th July 2018.
4. On 13th August 2018, the respondent was granted permission to appeal by First-tier Tribunal Judge Dineen. The matter comes before me to determine whether the decision of the FtT judge is vitiated by a material error of law, and if so to remake the decision.
5. In her decision of 7th December 2017, the respondent referred to a language analysis interview that was completed on 31st January 2017 to ascertain the appellant’s linguistic origin. The analysis established that the appellant’s linguistic behaviour is consistent with an Arabic linguistic community that is represented in Khartoum, Sudan. The respondent noted that the appellant, when interviewed, had been unable to describe to the interviewing officer which areas he had lived in. The respondent stated that although the appellant’s local knowledge of Sudan came across as incoherent and uncertain, it is accepted that he is a national of Sudan. The respondent emphasised that the appellant had been unable to demonstrate knowledge of the area of Sudan from which he claims to have originated. The respondent indicated her belief that the appellant is from the Khartoum area of Sudan. The respondent considered the appellant’s claim that he is a member of the Sudanese Zaghawa tribe. He was asked during interview, a number of questions regarding that

tribe in order to assess his claim. The respondent rejected the appellant's claim that he is a member of the non-Arab Zaghawa tribe.

6. In her decision promulgated on 17th July 2019, FtT Judge Phull summarised the background to the appellant's claim for international protection at paragraphs [7] to this [12] of her decision. At paragraph [16], the judge noted the respondent does not accept that the appellant is a non-Arab Darfuri of the Zaghawa tribe.
7. The judge's findings and conclusions are set out at paragraphs [17] to [28] of her decision. The judge starts off her consideration of the claim as follows:

"I find and the respondent accepts the appellant's nationality, identity and ethnicity as a Zaghawa from Sudan..."

8. Although no rule 24 reply has been filed by the appellant, before me Mr Madhani, rightly in my judgment, accepts there is an error of law in the decision of the FtT Judge. He accepts the respondent had only conceded the nationality and identity of the appellant. The respondent had not conceded the appellant is a member of the Zaghawa tribe. Mr Madhani candidly accepts the ethnicity of the appellant has an impact upon the assessment of the risk upon return. He accepts the issue of ethnicity is important when one considers the risk upon return in accordance with the country guidance. Mr Madhani accepts the decision of the FtT is infected by an error of law and should be set aside. The decision will need to be remade and he submits, the other findings made by the FtT judge could be preserved.
9. It is common ground that the respondent had not accepted the appellant's ethnicity as a Zaghawa from Sudan and had set out at some length in her decision letter, why that is so. If the Judge proceeds upon the basis that the respondent had accepted the appellant's ethnicity, she did so in error. Insofar as the opening line of paragraph [17] suggests the judge makes a finding that the appellant is a Zaghawa from Sudan, that

finding is devoid of any reasoning and fails to engage with any of the reasons given by the respondent for rejecting the appellant's claim that he is a member of the non-Arab Zaghawa tribe. It is now well established that it is generally unnecessary and unhelpful for FtT decisions to rehearse every detail or issue raised in a case, and laborious recitation of every piece of evidence is not necessary or desirable. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost. In the absence of a concession by the respondent, paragraph [17] of the decision fails to identify any reasons to support a finding that the appellant is an ethnic Zighawa from Sudan.

10. I have carefully considered the submission made by Mr Madhani that notwithstanding any error as to the appellant's ethnicity, it is still possible to preserve the positive credibility finding made by the Judge, particularly regarding his account of events in Sudan. At paragraph [19], the Judge accepted the appellant's evidence that he was arrested, detained, tortured and interrogated by the Sudanese authorities about his association with the opposition "*... because the background evidence corroborates that there are attacks on non-Arab Darfuris by the authorities or groups aligned with the authorities.*". In effect, it appears the judge accepted the account given by the appellant because it is supported by background material regarding the treatment of non-Arab Darfuris. The acceptance by the Judge of the appellant's account of events is intrinsically linked to the judge's belief that the appellant is a Zaghawa from Sudan and thus a non-Arab Darfuri. It is far from clear that the judge would have reached the same view of the appellant's account if she had rejected his claim that he is of the Zaghawa tribe. In my judgement, the appropriate course is for the decision to be remade, with no findings preserved.

11. The assessment of a claim for asylum such as this is always a highly fact sensitive task. In all the circumstances, I have decided that it is appropriate to remit this appeal back to the FtT for hearing afresh, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. The nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

12. The appeal by the Secretary of State is allowed. The decision of FtT Judge Phull promulgated on 17th July 2019 is set aside, and I remit the matter for re-hearing de novo in the First-tier Tribunal, with no findings preserved.

Signed
2019

Date: 20th December

Upper Tribunal Judge Mandalia