



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

**Appeal Number: AA/01337/2015**

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 9<sup>th</sup> November 2015**

**Decision and Reasons Promulgated  
On 12<sup>th</sup> November 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**I A  
(Anonymity Direction Made)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Manning, counsel, instructed by Turpin and Miller solicitors  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
2. First-tier Tribunal Judge Parkes dismissed IA's appeal on international protection grounds against a decision to remove him pursuant to s10 Immigration and Asylum Act 1999 dated 14<sup>th</sup> January 2015. The First-tier Tribunal decision was promulgated on 6<sup>th</sup> May 2015 and permission to appeal was granted on 18<sup>th</sup> June 2015 on the grounds that it was arguable that undue significance had been given to minor details and to what was arguably a typographical error in his date of birth and that the decision does not show that

the evidence as properly weighed and considered or that adequate reasons were given for the conclusions reached. The appellant is an Arab from Bulbul in Sudan – this is accepted by the respondent.

3. Before me Ms Manning confirmed that she was relying on three grounds of appeal namely:
  - i. Improper weight was placed upon the dates given by the appellant in his interview, one of which was a typographical error and this led to the judge erring in law in the weight to be given to the elements of his account
  - ii. Failed to give adequate consideration to the expert report of Mr Verney and the medical expert.
  - iii. Even if the appellant's account was not found credible, the judge had failed to address the pleaded ground that he was at risk of being persecuted on return to Sudan as a failed asylum seeker, as evidenced by the report of Mr Verney.
4. With regard to the third ground relied upon I asked Ms Manning to refer me to the specific sourced part of Mr Verney's report other than his assertions in [133] to [137] that the appellant would be identified as a failed asylum seeker and thus have rebel sympathies imputed, be accused of having defamed the Sudanese government and be sent to a clandestine detention camp. *HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062* head note (2) holds *Neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) are as such at real risk on return to Khartoum.* This remains current. Ms Manning confirmed that it did not appear that Mr Verney engaged with or distinguished this other than to assert the opposite. I considered the report by Mr Verney and his annexes and found (on pages 49 - 51) the Executive Summary of a report called "Waging Peace Report" dated September 2014 which refers to 11 testimonies in the full report and 6 in the 2012 report showing that many who "...return to Sudan after spending time in the UK or elsewhere are put at risk of detention and torture". There is no indication in the report by Mr Verney of the basis of that report, who compiled it, how the testimonies were taken and by whom and why relevant or significant weight should be placed upon it. The testimonies are not appended and it is not possible to ascertain in what way they are similar or different factually to the appellant. There is no engagement with the detailed reasons given in *HGMO* why involuntary returnees or failed asylum seekers or draft evaders or deserters are not, as such, at real risk.
5. The failure of the First-tier Tribunal judge to deal with that specific ground of appeal is thus an error of law but it is not material; the conclusion would have been the same.
6. In so far as the other two grounds are concerned these are interlinked. The essence of Ms Manning's submission was that the error in the appellant's date of birth was simply typographical and should have had no bearing on the credibility findings; the error in the year he left Sudan (2007 as oppose to 2006) was simply an error on his part which he had explained in his evidence and that the other dates (ie the named months and year that he spent in Turkey, Italy and Greece) flowed from that. He had accepted that he spent three years in France

and not claimed asylum. Ms Manning accepted that the medical report could not identify the circumstances of the injuries that the appellant had sustained but submitted that the fact that it was accepted that it had been as a result of blast injuries should result in more weight being placed upon it in the determination of the credibility of the claim, when considered in the context of the explanation for the date inaccuracies.

7. The core of the appellant's claim was that he had been forcibly conscripted into the army – although this may have been into the Popular Defence Force. He had not served long before he was injured and permitted to return home after hospital treatment in order to recover but that he would be expected to return to complete his military service, which he did not want to do. He did not claim any political activity either in Sudan or in the UK. His evidence was that his family owned a couple of dozen cows and 40 or so sheep and goats. A relatively wealthy cousin who was a trader in livestock had arranged documents and passage out of Sudan.
8. Mr Verney in his report states ([6]) "For the poor and members of ethnic minorities there is forced conscription". Later in his report he refers ([129]) "...impoverished and economically marginalised Darfuri Arabs have realised that the regime is not acting in their interests and there is a growing number of Arab Darfuri who have sided with the rebels". Ms Manning confirmed that the appellant had not sought to rely upon any political activity; that his claim for international protection was based upon forced conscription. She submitted that Mr Verney's report, and that of Professor Roberts, were relevant in the assessment of the credibility of the appellant's claim to have been forcibly recruited. She submitted that the importance of Dr Verney's report which had not been engaged with was that he was saying that there were increasing numbers of Darfuri Arabs who were in opposition to the government and this appellant was one of them or would be seen as one of them.
9. The respondent's submission was that the decision of the First-tier Tribunal judge was sustainable – the judge had been entitled to reach the conclusion that the evidence relied upon by the appellant was tainted because of his failure to claim asylum for such a lengthy period of time. Mr Mills submitted that even if there had been an error in the computation of dates and times spent in Turkey, Greece and Italy, there had been no credible explanation why the appellant had not claimed asylum in France where he had remained for three years; the judge was entitled to place weight upon that failure.
10. The decision of the First-tier Tribunal judge does place considerable weight on the discrepancies in the dates provided by the appellant for his travels through Europe since leaving Sudan. The judge accepts he was injured in a blast. He specifically reminds himself that he is required to consider the evidence overall (see [18]). In addition to the 'dates issue', the judge refers to Mr Verney's statement that it is the poor and impoverished who are recruited. The judge says that as an Arab with the ability to fund his travel out of Sudan that 'would suggest he is not from a particularly poor section of Sudanese society'. Objection to this comment is made in the grounds seeking permission to appeal and that this would not mean, as per the expert's report, that he was excluded from conscription. I cannot see, in Mr Verney's report, a sourced and reasoned

statement that this appellant either was or would be perceived as being in opposition to the government.

11. Although on the face of the determination – which is, as commented upon in the grant of permission to appeal, brief – there is a concentration on the dates given by the appellant as to when he left Sudan (2007 or 2006) and it may be that the interpretation given by Ms Manning that the dates for time spent in Turkey, Greece and Italy flowed in error from that first error, the judge does, as he is entitled to, place weight upon the failure to claim international protection for a number of years as a matter to be weighed in the assessment of the claim. I have already referred to the lack of evidence in the Expert report to distinguish head note (2) of *HGMO* and it is not possible to see how, even if the judge had been accepted that the appellant made an error as to the date he left Sudan and that the incorrect dates flowed from that, there could have been another conclusion.
12. The evidence before the judge was that the appellant was an Arab, did not come from a poor or impoverished background, had a relatively wealthy cousin, had been injured in a blast, had failed to claim international protection for a number of years despite spending 3 years in a safe country with an asylum assessment procedure that has not been successfully challenged and that he did not claim any anti- government political activity.
13. The references by Mr Verney to his own concern about filtering out opportunists does not affect the consideration of the material put forward by him in his report which should be independent in any event. The reference to ‘no-one fabricating a claim...they were from the Khozam tribe’ is unexplained both in terms of why that is so and what relevance it could have to this appellant’s claim to have been conscripted. Similarly the implication that because this appellant is an Arab Khozam tribe in some way means that he is more likely to have been conscripted is unexplained as is the implication that this appellant could be seen as being in opposition to the authorities. There is nothing in the report by Mr Verney which draws this appellant into a category that could credibly be seen as being in opposition to the authorities and thus at risk of being persecuted if returned to Sudan. The references in [132] to [137] are unsourced and do not identify any material or sources relied upon to distinguish *HGMO*. Even if the appellant had been forcibly conscripted there does not appear to be reliable evidence either in the other documents before the judge or in the expert report that the appellant would be at risk of being persecuted if returned to Sudan.
14. I therefore conclude that although the decision of the First-tier Tribunal judge could have identified with more rigour the evidence before him, even taken at its highest and accepting that the appellant was conscripted and then given medical leave of absence after a blast injury, in the light of *HGMO* the appeal would have been dismissed on the evidence before the judge.
15. The decision of the First-tier Tribunal does not disclose an error of law such that the decision is set aside to be remade.

**Conclusions:**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision is to be set aside.

I do not set aside the decision

The decision of the First-tier Tribunal stands.

**Anonymity**

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).



Date 10<sup>th</sup> November 2015

Upper Tribunal Judge Coker