



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

Appeal Number: AA/08385/2015

THE IMMIGRATION ACTS

Heard at Manchester

**Decision & Reasons
Promulgated**

On 4th September 2017

On 15th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown of Counsel, instructed by Broudie Jackson & Canter Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Lambert of the First-tier Tribunal (the FtT) promulgated on 4th May 2017.

2. The Appellant is a male Sudanese citizen born [] 1993. He arrived in the United Kingdom illegally on 14th November 2014 and claimed asylum, claiming to be a member of the Berti tribe originating from Darfur. The asylum and human rights application was refused on 13th May 2015 and the appeal was heard on 26th April 2017.
3. The FtT heard evidence from the Appellant and a witness, and concluded that their evidence was not credible. The FtT found that the Appellant had failed to establish that he is a member of the Berti tribe, or that he has participated in any political activities in the UK likely to bring him to the attention of the Sudanese authorities. The FtT concluded that the Appellant would not be at risk if returned to Sudan and his appeal was therefore dismissed.
4. The Appellant applied for permission to appeal to the Upper Tribunal. He relied upon three grounds.
5. Firstly it was contended that the FtT had erred in considering the expert report of Mr Peter Verney. The FtT at paragraph 9.5 had described the report as providing “lukewarm support for the Appellant’s case” by comparison with other reports from the same expert, considered by the FtT in other cases. It was contended that the FtT had erred in law because the Appellant was not given an opportunity to assess and compare those other reports.
6. The Appellant should have been provided with those reports in order to be given a fair opportunity to counter what the FtT had stated about the language used by the expert. Because the Appellant had not been provided with those reports, unfairness had arisen. It was contended that the FtT had not engaged with the content of the expert report, and had provided inadequate reasons for rejecting the expert evidence.
7. Secondly it was contended that the FtT had erred in law by providing inadequate reasons for rejecting the evidence of the Appellant’s witness. At paragraph 9.9 the FtT noted that no explanation had been offered as to why it had taken until March 2017 for the Appellant to indicate to either the Home Office, the expert, or his own solicitors, his connections with the witness, and produce a witness statement. It was submitted that there may be a “whole number of reasons” for this, and the FtT should have put this point to the Appellant and his witness at the hearing and failure to do so had resulted in procedural unfairness.
8. Thirdly it was contended that the FtT had erred in law by failing to have regard to material evidence, namely the Appellant’s responses in his interview about his ethnic origin. In his asylum interview the Appellant was asked questions about the Berti tribe, and his answers appeared to be correct. The Respondent in the reasons for refusal letter had made little or no assessment of these answers. In the absence of any suggestion that the Appellant’s answers were wrong, it was incumbent upon the FtT to have regard to those answers when forming a view as to whether the

Appellant was a member of the Berti tribe. It was not permissible for the FtT simply to ignore that evidence. The evidence should have been properly evaluated and either accepted or rejected with adequacy of reasoning being provided.

9. Permission to appeal was granted by Judge Saffer of the FtT and I set out below the reasons for granting permission;
 - “3. It is arguable that there was inadequate consideration of the evidence arising from his interview regarding his tribal affiliation whose accuracy appears to be unchallenged, and that generalisations on the expert’s report may have unfairly affected the weight to be attached to it. All grounds may be argued.”
10. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

11. Mr Bates confirmed that there had been no rule 24 response but that the application was opposed.
12. Mr Brown relied upon the grounds upon which permission to appeal had been granted. With reference to the witness, Mr Brown submitted that notification that the witness was to be called to give evidence had been given to the Tribunal and the Respondent’s Presenting Officer at a hearing on 2nd November 2016 and a handwritten statement from the witness submitted at that hearing.
13. With reference to the Appellant’s answers about the Berti tribe in his asylum interview, Mr Brown pointed out that questions 71-136 of the interview related to the Appellant’s ethnicity, and the FtT had not engaged with the answers.
14. Mr Bates submitted that the FtT had not erred in law. With reference to the first ground, Mr Bates submitted that the FtT had made a passing reference to other reports, but had given sufficient reasons for finding that the expert report in this case, did not support the Appellant’s case.
15. With reference to the second ground, Mr Bates pointed out that the witness statement made by the witness, contained within the Appellant’s bundle, is dated 27th March 2017.
16. Mr Bates submitted that the grounds upon which permission to appeal was granted, did not disclose any material error of law, and the FtT had given adequate reasons for findings made.

17. By way of response, Mr Brown referred to paragraph 256 of the expert report in which the expert indicated that the Appellant “has given a moderately detailed account of his experiences which is coherent.” It was not clear without seeing other reports whether this was language normally used by the expert. The same applied to the expert’s comment at paragraph 264 of his report, “in my opinion, his fear of adverse treatment if returned to Sudan may be justified.”
18. With reference to the second ground of appeal, Mr Brown submitted that the FtT was factual wrong at paragraph 9.9 in concluding that it had taken until March 2017 for the Appellant to make known his connection with his witness. Mr Brown noted that Mr Bates in his oral submissions had little to say in relation to the third ground of appeal.
19. Mr Brown submitted that the FtT decision was flawed by material errors of law, and should be set aside and the appeal remitted to the FtT to be heard afresh.
20. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

21. Dealing firstly with Ground 1 I do not find that any unfairness arose from the description of the FtT at paragraph 9.5 of Mr Verney’s expert report. I do not accept that in view of the FtT comments, the Appellant must be provided with the other reports considered by the FtT in other cases. The relevant findings made by the FtT are set out in paragraph 9.5. The FtT repeats some phrases made by the expert in the report. The FtT did not find, having considered that report, that it supported the Appellant’s claim to be a member of the Berti tribe.
22. At paragraph 9.6 the FtT made specific reference to paragraph 261 of the expert report in which Mr Verney comments that it is relatively easy for an individual to obtain sufficient information to be able to demonstrate knowledge of a tribe, and that therefore it is more helpful to have peer group recognition.
23. In my view it is clear from reading paragraphs 9.5 and 9.6, that the FtT did not find that the expert report supported the Appellant’s claim, and the FtT complied with the principles in Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) by providing adequate reasons for the conclusions reached. I do not find merit in the submission that the FtT did not engage with the content of the report. This ground does not disclose an error of law. The FtT has not acted unfairly.
24. Dealing with the second ground and the finding by the FtT that the Appellant’s witness was not credible, it is common ground that the statement produced by the witness was dated 27th March 2017, and the FtT did not err in pointing that out. However it is clear from the Tribunal file that at a previous hearing on 2nd November 2016, details of the

witness were given to the Tribunal and the Respondent's Presenting Officer, and at that hearing a very brief handwritten witness statement, dated 2nd November 2016 was submitted. This statement confirmed the view of the witness that the Appellant was a member of the Berti tribe. Therefore if, which is not absolutely clear, the FtT was suggesting that details of the witness had only been produced in March 2017, that is factually incorrect.

25. I do not, however, find any material error of law in this ground. This is because at paragraph 9.8 the FtT considers the evidence given by the witness, and notes the significant discrepancies between his evidence, and that of the Appellant as to the circumstances in which they claimed to have last met in Sudan. The FtT makes it clear that the discrepancies are significant, and as a result, the FtT was entitled to find that the evidence was not credible. Adequate reasons were given for this finding, and this ground discloses no material error of law.
26. Turning to the third ground, the answers given by the Appellant in his asylum interview, in relation to membership of the Berti tribe, were provided to Mr Verney. It is clear from Mr Verney's report that he received a complete copy of the Appellant's asylum interview. Those answers were therefore considered by Mr Verney when he prepared his report. The FtT did not comment specifically upon the answers given by the Appellant in his asylum interview, but that is not a material error, because those answers had been considered by the expert in his report, which was considered by the FtT. The expert conducted his own detailed interview with the Appellant, and the FtT considered the conclusions reached by the expert at paragraphs 256-264 of his report, and recorded some of those conclusions at paragraphs 9.5 and 9.6. The FtT notes Mr Verney's conclusion that the Appellant has provided "a moderately detailed account", and "his answers were partly although not wholly correct" and "reasonable albeit limited with regard to his ethnic identity." It is not therefore the case that the FtT has disregarded the answers given by the Appellant when questioned about his ethnicity. No error of law is disclosed by this ground.
27. What has not been challenged by the Appellant is the FtT finding at paragraph 9.4 that the Appellant had provided no detail as to what injuries he suffered which caused him to be hospitalised for eight days, which was the reason why he failed to report to the authorities and subsequently stated that he had to flee from his home. The FtT was entitled, and did take this into account when reaching an adverse credibility finding.
28. Also not challenged was paragraph 9.7, in which the FtT gave cogent reasons for rejecting and placing no weight upon evidence from the Berti community in the UK dated 25th May 2016.
29. The FtT has considered the evidence in the round, has taken into account all material evidence, and provided adequate reasons for the conclusions reached. It is clear that the Appellant disagrees with those conclusions,

but the grounds upon which permission to appeal was granted, do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose an error of law such that it must be set aside. I do not set aside the decision. The appeal is dismissed.

Anonymity

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant 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. This direction is made because the Appellant has made an international protection claim and is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 7th September 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee has been paid or is payable. The appeal is dismissed. There is no fee award.

Signed

Date 7th September 2017

Deputy Upper Tribunal Judge M A Hall