



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

Appeal Number: PA/13098/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons
Centre Promulgated
On 13th October 2017 On 01st November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR N M E
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif (Solicitor)

For the Respondent: Ms H Aboni (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Asjad, promulgated on 14th February 2017, following a hearing at Birmingham Sheldon Court on 26th January 2017. In the determination, the judge dismissed the appeal of the Appellant, whereby the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sudan, who was born on 1st January 1987. He appealed against the decision of the Respondent Secretary of State dated 18th February 2012 refusing his application for asylum and humanitarian protection.

The Grant of Permission

3. On 30th August 2017, permission to appeal was granted by the Upper Tribunal on the basis that it was arguable that the judge failed to consider evidence relating to the Appellant's *sur place* activities, as set out in the bundle at pages 88 to 89, together with photographs at pages 92 to 97. Furthermore, the judge appears not to have been directed to the country guidance decision in **IM and AI (risk - membership of Beja tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 00188**, and it was arguable that he did not assess the risk on return in the light of that guidance, and the context of the evidence as a whole. Second, that although there had been an earlier determination by IJ Dickson, there were now additional documents that postdated that determination, and these appeared at page 87, and related to the Appellant's tribal membership of the Berti tribe, and this does not appear to have been taken into account by the judge. Finally, insofar as any criticism was made of the judge's rejection of the credibility of the Appellant and his two brothers as witnesses (see paragraphs 28 to 34) the judge had given adequate and sustainable reasons for this, and this could not be criticised.

Submissions

4. At the hearing before me on 13th October 2017, Mr Ramzan, relied upon the Grounds of Appeal, as the Appellant's solicitor. He submitted that the judge failed to consider the *sur place* activities, as recounted in the Notice of Decision of the Upper Tribunal, at pages 80 to 89. Second, there were photographs at pages 92 to 97, which had not even been mentioned by the judge. Furthermore, there were additional photographs at pages 88 to 89 that had not been mentioned. The Appellant had expressed a fear arising on account of the Justice of Equality Movement (JEM) and this had not even been mentioned by the judge. Other documents about the Appellant's tribal affiliation with the Berti tribe were not mentioned at page 87. Finally, the *sur place* activities were not mentioned.
5. For her part, Ms Aboni submitted that she would have to accept that, notwithstanding the Rule 24 response, which was written at the time when there had been no access to the trial bundle, that failure to mention these court documents, and in particular the letter from the Berti Organisation, did show an error of law arising from the determination. Nevertheless, the judge was right in his assessment of the credibility of the witnesses, and this finding should be preserved intact.

6. In reply, Mr Sharif submitted that it will be difficult to argue for the retention of the judge's findings in the assessment of the credibility of the witnesses, once it had been accepted that the surrounding documents relating to the Appellant's claim had not been properly taken into account, and that it was far better to remit the matter to the First-tier Tribunal on a de novo basis.

Error of Law

7. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are quite simply that there is broad agreement between the Appellant and the Respondent Secretary of State that court documents have not been taken into account, such as the letter from the Berti Organisation, the Appellant's *sur place* activities, and the photographs, and this leads to a material error of law.
8. The main question is whether the findings of the judge in relation to the witnesses should be preserved intact.
9. In my opinion, it would be artificial to do so, and lead to unnecessary complication for the judge who will next hear this appeal, and that it is right and proper that the matter is remitted back to the First-tier Tribunal, to be heard by a judge other than Judge Asjad, on a de novo basis.

Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal to be heard by a judge other than Judge Asjad.

An anonymity direction is made.

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 their 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 appeal is allowed.

Signed

Date 31st October 2017

Deputy Upper Tribunal Judge Juss

