



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04612/2018

THE IMMIGRATION ACTS

Heard at Manchester
On July 27, 2018

Decision & Reasons Promulgated
On August 02, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KHALID [M]
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Ms Ashraf, Solicitor

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that, for example, reference to the respondent is a reference to the Secretary of State for the Home Department.
2. No anonymity direction is made.

3. The appellant is a national of Sudan and he entered the United Kingdom on November 14, 2017 having been issued with a visit visa dated June 10, 2017. The appellant claimed asylum on December 8, 2017 but the respondent refused that application in a decision dated March 22, 2018 under paragraphs 336 and 339F HC 395.
4. The appellant lodged grounds of appeal on April 5, 2018 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. His appeal came before Judge of the First-tier Tribunal Foudy (hereinafter called "the Judge") on May 8, 2018 and she allowed the appellant's appeal on protection and human rights grounds in a decision promulgated on May 14, 2018.
6. The respondent appealed this decision on May 17, 2018 on the grounds that the Judge had erred by failing to take into account and/or resolve conflicts of fact or opinion on material matters. The grounds referred to paragraphs 33 to 36 of the refusal letter and the grounds argue the Judge failed to address these issues when considering credibility. The grounds also argued that the Judge should have departed from the country guidance case law based on the material that had been referred to in the decision letter between paragraphs 59 and 72.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Boyes on June 15, 2018 who found the grounds disclosed an arguable case albeit it was not the "strongest appeal ever brought".
8. The appellant's representatives filed a Rule 24 response dated July 23, 2018 in which it was argued that the decision had been properly and adequately reasoned. At paragraph 16 of the Judge's decision, the Judge found that the appellant had an adverse history and that his account of arrest and detention was credible and consistent with country evidence. With regard to a departure from the country guidance it was argued that the Judge had identified that she had had sight of the respondent's bundle at paragraph 8 of her decision and that she had fully considered this and the other objective evidence before her.

SUBMISSIONS

9. Mr Tan adopted the grounds of appeal that had been lodged with the application for permission and submitted that in dealing with the factual issues the Judge had failed to engage with the events. Whilst he accepted detention was commonplace he submitted that it was surprising the appellant was dealt with in the way he was namely being released as quickly as he was. He submitted the analysis in paragraph 16 of the Judge's decision was inadequate and failed to take into account the fact that on the visa application form he stated he had never been detained. Whilst acknowledging the Country Guidance decisions of AA (Non-Arab Darfurians-relocation) Sudan CG [2009] UKAIT 00056, MM (Darfuris) Sudan CG [2015] UKUT 00010 and IM and AI (Risks-membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 188 he submitted there was evidence in the decision letter which enabled the Judge to depart from the Country Guidance, but the Judge had failed to consider the same in her decision.

10. Ms Ashraf opposed the application and relied on the Rule 24 response referred to above. She submitted that the Judge had found the appellant's account was broadly consistent with the country evidence. Whilst she acknowledged the Judge made no reference to the appellant's answer on the visit visa form about being detained she referred to the fact that the appellant had stated that the form had been completed by his employer and that any errors were caused by that employer and not the appellant himself. Importantly, the Judge accepted he had been detained and following the Country Guidance cases she submitted there was no cogent evidence adduced that would enable the Judge to depart from those decisions. The Tribunal in IM and AI affirmed that non-Arab Darfuri remain at risk.

FINDINGS

11. This was a challenge by the respondent to the Judge's assessment of the evidence and her decision to follow the Country Guidance caselaw.
12. The Judge had considered the appellant's claim and whilst her findings in paragraph 16 lacked detail she was nevertheless satisfied that his claim to have been detained, on suspicion of opposition sympathies and tortured, was credible because it was consistent with what was reported in the country evidence.
13. Whilst the Judge did not mention the discrepancy in the Visa application form she had already dealt with that form by finding it had been completed by an employer and she accepted that any inconsistency, albeit in relation to another matter, did not undermine the overall credibility of the appellant.
14. The Judge was not required to deal with each individual point that was raised if she reached the view, based on supporting evidence, that what was being claimed could have happened. The standard of proof is low and the Judge was satisfied the standard was met.
15. Whilst the decision letter made reference to what is described as "significant evidence" I found nothing contained within the decision letter that was likely to persuade any Judge to depart from the Country Guidance decisions. The starting point is whether as a non-Arab Darfuri with a limited history of detention he would be at risk of persecution.
16. Mr Tan's position is that even though the appellant is by ethnicity a non-Arab Darfuri not everyone in this category is now at risk.
17. However, having accepted the Judge's conclusion that he had a profile and history of detention, albeit limited, and following the guidance as set out in case law I find that although the Judge's assessment was limited she ultimately reached a conclusion that was clearly open to her and I am satisfied further reference to the material in the decision letter would not have altered the outcome of this appeal. A lack of discuss does not on the facts of this case amount to an error in law.

DECISION

18. There is no error in law and I uphold the decision.

Signed

Date 27/07/2018

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath it.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as no fee was payable.

Signed

Date 27/07/2018

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath it.

Deputy Upper Tribunal Judge Alis