Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI- 2021-000283
IA/01345/2020

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 18 August 2022	**On 29 September 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MAS
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Forbes of Lifeline Options CIC.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a citizen of Sudan born on 6 June 1978, appeals with permission a decision of First-tier Tribunal Judge Thapar ('the Judge') promulgated on the 1 July 2021 following a hearing at Birmingham IAC on 28 June 2021.

2. The Judge records the appellant's immigration history at [1 – 2] of the determination in the following terms:

1. It is undisputed that the Appellant is a national of Sudan and his date of birth is 06 June 1978. He is now aged 43 years. The Appellant left Sudan on 04 September 2017 and travelled to Germany, then onto Amsterdam, Switzerland, back to Germany and finally to the United Kingdom ("UK"). The Appellant arrived in the UK on 26 September 2017. The Appellant claimed asylum on 26 September 2017. This asylum claim was refused on 12 January 2018. The Appellant appealed this decision. This appeal was dismissed on 27 February 2018 in a decision promulgated on 05 March 2018. The Appellant applied for permission to appeal to the Upper Tribunal however permission was refused. The Appellant made further submissions and these were refused by the Respondent on 29 September 2020.

2. The Appellant appeals the refusal of 29 September 2020 pursuant to section 82(1)(a) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

3. The Judge records having heard oral evidence from the appellant and one witness in addition to the documentary evidence. The Judge specifically states that appropriate care and time were taken to ensure that all relevant documents were before the First-tier Tribunal. I find from reading the determination and the supportive evidence that it is clear that the Judge considered that evidence with the required degree of anxious scrutiny.

4. The Judge sets out the correct legal self-direction concerning the burden of standard approved between [9 – 11]. Having read the determination in detail I do not find it made out that despite having set out the correct applicable legal test the Judge failed to apply it.

5. The Judge summarised the appellant's claim at [13 – 14] including the appellant's claim that his actions and associations brought him to the attention of the National Intelligence Security Services in Sudan leading to his being arrested and tortured and have been falsely accused of trying to steal land which was gifted to him by his mother, and that he faced discrimination due to his dual ethnicity.

6. The Judge sets out findings of fact from [16] of the decision, the important paragraph being [18] in which the Judge finds the appellant's account contains inconsistencies in addition to implausible and incoherent elements, the cumulative effect of which is to undermine the credibility of the appellant's account and the veracity of the claim. At [18 (a-m)] the Judge sets out what are described as "examples only" of such elements.

7. The Judge refers to an earlier determination of First-tier Tribunal Judge E. M. M. Smith, promulgated on 5 March 2018 following a hearing at Birmingham Priory Court on 26 February 2018, in which consideration was given to the appellant's appeal against the decision of the Secretary of State to refuse an application made on 6 September 2017. The date of that refusal was the 12 January 2018.

8. Judge Smith records that much turned on the credibility of the appellant's claim in terms of his account for the reasons why he fled Sudan. Judge Smith noted the appellant's claim in his screening interview that he was arrested three times in Sudan yet in his first witness statement that he was detained on five occasions and that he

provided considerable detail about those detentions. Judge Smith, however, records the discrepancy in the evidence which was not satisfactorily explained. The appellant also provided three warrants, referred to as summonses, which the appellant claimed were sent to him by a friend in Sudan but Judge Smith records at [26] that there were too many questions over the reliability of these documents and as such the Judge was not satisfied the documents could be relied upon.

9. At [29] of the earlier determination Judge Smith wrote:

> 29. I have considered the observations in K (DRC) 2003 UKIAT 00014 where the Tribunal said: "the case of Chiver is often relied on by appellants. It is of course perfectly correct that a story should not be rejected on the basis of minor discrepancies. A truthful witness may make mistakes because of nerves or forgetfulness or because of the experiences that have been suffered, for example. However, it does not follow that a witness who falters over what might appear to be peripheral matters is in all cases a witness of truth. A person who has made up his story may get the central elements right. An Adjudicator will have to use his common sense and experience to make his findings. He will need to consider whether an accountant which frays at the edges from time to time is nevertheless a truthful one or alternatively whether the witness has got himself into difficulties in unplanned departures from a pre-rehearsed and unreliable script". Having done so for the reasons which I have given, I am not satisfied even to the low standard of proof that the appellant has provided a true account of his experiences and reasons for claiming asylum that justifies his claim of fear. I have found that appellant's account is simply not credible and he has concocted his account of events in Sudan. I do not accept he has established that his parents are separated and, therefore, I do not accept he was treated as belonging to the Tunjur Tribe and that he followed his father's Tribe namely the Jalaya tribe. I do not accept the appellant was summonsed to court and I do not accept the appellant has established that the summonses he has provided are reliable. The appellant accepted in his evidence that he had never been charged with any offence and he has no political profile. It is significant that having applied for a visa in 2015 the appellant was confident enough to intend then to return to Sudan after his holiday. I am satisfied having factoring into my decision my section 8 findings that the appellant has not discharged the burden of proof and established he is a refugee or that he has been the victim of threats and intimidation by the authorities or indeed has been the subject of detention and ill-treatment.

10. The Judge in the current appeal was entitled, in accordance with the Devaseelan principles, to take account of Judge Smith's decisions. The Judge did not, however, take that decision as being determinative and clearly considered the evidence that had been provided to establish whether the case now presented warranted a departure from Judge Smith's findings and a more favourable outcome for the appellant.

11. The appellant relied upon the evidence of a number of witnesses and in regard to those Judge writes at [11 (f-i)]:

> f. The Appellant did provide statements from Mr Ishtiaq Ghafoor ("Mr Ghafoor") dated 04 December 2019 and Ms Michelle Meiners ("Ms

Meiners") dated 08 December 2018. Neither attended the hearing and therefore no questions could be put to them. Mr Ghafoor states that the Appellant spoke good English, French and German, and that on many occasions he was informed by the Appellant that he had been questioned by the NISS at their offices and outside. There is no mention of the Appellant disclosing the alleged torture inflicted by the NISS and Mr Ghafoor does state that during his time in Khartoum he did not see the Appellant come to any physical harm.

g. The statement from Ms Meiners is dated 08 December 2018. Ms Meiners states that she met the Appellant in April 2017 and I note that the Appellant left Sudan in September 2017. Ms Meiners describes the Appellant as an optimistic and hospitable person. Ms Meiners states she saw the Appellant's wellbeing deteriorate during the last weeks, it is not clear what period Ms Meiners is referring to and whether this was during the Appellant's attendance in Sudan or after he left Sudan. Ms Meiners states that the Appellant eventually disclosed details of the treatment he states he received from the NISS and goes onto state "I am surprised that Tom did not tell me this before, or his other acquaintances at the Dutch Embassy", it is therefore clear that the Appellant informed Ms Meiners at a later stage. The Appellant claims that he was arrested on 30 July 2017 and was detained for a month, yet Ms Meiners describes meeting the Appellant twice a week each week. She does not state that the Appellant disappeared for a time or that she was unable to communicate with him at any point within the five months that they were in Sudan together.

h. Mrs Kato first met the Appellant in 2012 in Sudan and she remained in Sudan until 2016. Miss Kato states that the Appellant started to keep a low profile, stating this was in 2014, 2015 and 2016. I note that the Appellant does not allege to have experienced any difficulties in 2014. Mrs Kato's account was vague and simply stated that the Appellant stopped coming to gatherings. I note that Mr Ghafoor and Ms Meiners do not state that the Appellant kept a low profile. Although, Mrs Kato also described the Appellant as a high-profile Sudanese who was invited to all the expatriates' parties. Mrs Kato states that the Appellant disclosed in November 2018 his issues with the Sudanese authorities. Mrs Kato states at that time she had not seen the Appellant for a couple of years. Mrs Kato also states that the Appellant "was never so political before in Sudan".

i. I find that the above witness evidence does not add any further weight to the Appellant's claim. The Appellant's account appears to be inconsistent with that provided by Ms Meiners, the Appellant accepted that he informed Mrs Kato and Mr Ghafoor of his problems in Sudan after his arrival in the UK. None saw first-hand any difficulties experienced by the Appellant. I therefore find that these statements do not even to the lowest standard establish that the Appellant had come to the adverse attention of the authorities in Sudan.

12. The Judge also clearly took into account the evidence of Dr Bekalo dated 16 September 2019. The Judge records concern about the impartiality of the author of the report, and Dr Bekalo as a witness, noting that he did not even acknowledge the adverse credibility findings made by Judge Smith regarding the impact of the appellant's inconsistencies in his account. It was found to Dr Bekalo went beyond

the remit of a country expert warranting little weight being attached to his report. It was also noted by the Judge that the report was almost 2 years old and did not reflect the current political landscape in respect of political rights within Sudan at the date of the hearing. Those are findings available to the Judge on the evidence.

13. The Judge's conclusion is that the appellant had failed to establish even to the lower standard that he will be at risk on his return to Sudan and notes the appellant's acceptance before Judge Smith that he did not have a political profile. At [21] the Judge writes:

> 21. The Appellant has been inconsistent in the core of his account, not only has the Appellant failed to address the inconsistencies raised by Judge Smith, his account has again changed as detailed above. Consequently, I find that the Appellant has failed to establish to the lower standard that he would be at risk on return to Sudan. I therefore see no reason to depart from the decision previously made by Judge Smith.

14. The appellant sought permission to appeal which was refused by another judge of the First-tier Tribunal but granted by Upper Tribunal Judge Kamara on 30 November 2021, as it was said to be arguable that the Judge may have made errors of fact as well as there being a failure to consider the objective evidence.

15. The Secretary of State has filed a Rule 24 response dated 9 February 2022 the operative part of which is in the following terms:

> 2. The respondent opposes the appellant's appeal and will submit that the decision and reasons of First-tier Tribunal Judge Thapar dated 1st July 2021 is legally sound and sustainable.
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> 3. It is respectfully submitted that the appellant's grounds of appeal amount to no more than extended disagreement with the Judge's reasons. The appellant's contention that the Judge's summary of witness evidence is 'inaccurate and misleading' is inapt. It is plain from the determination that the Judge was in command of, and had careful regard to, the evidence.
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> 4. It is well-settled that there is no requirement for Judges to rehearse every detail or issue raised in a case (Budhathoki [2014] UKUT 00341 (IAC)). The Judge in the instant matter has properly identified and resolved the key conflicts in the evidence, and has adequately explained the Tribunal's reasons in clear and brief terms.
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> 5. The SSHD further relies upon the Court of Appeal's relatively recent summary of principles to be applied upon appeal, as set out in KM v SSHD [2021] EWCA Civ 693 at [77], in particular the following:
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> (1) First, the UT is an expert tribunal and an appellate court should not rush to find a misdirection an error of law merely because it might have reached a different conclusion on the facts or expressed themselves differently (per Lady Hale in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at [30]).
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> (2) Second, the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the UT's assessment of the facts (per Lord Dyson in MA (Somalia) v SSHD [2010] UKSC 49 at [45]).

(3) Third, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account (per Lord Dyson in MA (Somalia) at [45]).

6. It is submitted that the application of these principles fully answers the appellant's challenge, including at para [4] of the grounds, which it is respectfully submitted amounts to no more than an attempt to reargue the F-tT appeal.

Error of Law

16. The appellant relied upon four grounds of appeal, grounds 1 to 3 asserting similar errors by the Judge. They are in the following terms:

1. FTTJ errs in making an inaccurate and misleading summary of the witness evidence of Ishtiaq Ghafoor. FTTJ incorrectly states that "there is no mention of the Appellant disclosing the alleged torture inflicted by the NISS". This is a misleading gloss on the actual words of the diplomat:

   "During my time in Khartoum, I did not see Tom come to physical harm. Which is not to say he didn't suffer any attacks. I believe he's the kind of person who might not have told me about any physical suffering he faced because he didn't want to upset me or to make me feel obliged to support him as a diplomat"

   It would indeed be most unusual for a diplomat personally to witness acts of torture committed by his host state. The overall position is clear: Mr Ghafoor does believe that the appellant suffered harm and is keen to support his case

2. FTTJ further errs in offering a misleading interpretation of a key part of the witness evidence of Ms Michelle Meiners, an intern in the Dutch Embassy at Khartoum: FTTJ states that: "Ms Meiners states she saw the Appellant's wellbeing deteriorate during the last weeks, it is not clear what period Ms Mieners is referring to and whether this is during the Appellant's attendance in Sudan or after he left Sudan". The actual words in the statement are unambiguous on this point:

   "Tom became a quiet, tired person in a state of desperateness. I recall that he was suffering from heacaches all the time. I asked Tom many questions and gradually he shared with me his problems with the NISS (the Sudanese National Security. I was surprised Tom did not tell me this before, or his other acquaintances at the Dutch Embassy. But I learned that he still hoped to find a solution for his safety to stay in Sudan"

   From this it is abundantly clear that Tom's (the appellant's) disclosures to the witness of suffering at the hands of the Authorities predated his departure from Sudan.

3. FTTJ again errs in miscontruing the evidence of Mrs Hisae Kato, a project manager in the Khartoum offices of the IOM at the period in question. FTTJ reports that: "Miss Kato states that the Appellant started to keep a low profile, stating this was in 2014, 2015 and 2016" The actual reference to 2014 and 2015 (there is none to 2016) is as follows:

> ***"The diplomatic community started to really feel the pressure under NISS when two members of the British Embassy were arrested, I believe in 2014 or 2015, for kissing on the street after a social gathering (....) I have no evidence to demonstrate a direct link between this and Tom' arrest and torture. But Tom was one of the highest profile Sudanese who would be invited to all expat parties (....)He became much quieter in communication and started to keep an extremely low profile"***
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> Thus, there is no specific date given in relation to when the appellant became quiet and of low profile, but the word "became" indicates there was change.

17. It can be seen from a reading of the determination that the Judge clearly took the evidence of these witnesses into account and has made findings as to why that evidence did not warrant having the weight attached to it that the appellant suggests it should have had.

18. Paragraph 4 of the grounds suggested the Judge had erred in omitting all references to "a considerable body of objective evidence in the appellant's bundle…". It is settled law, as referred to in the Rule 24 response, that a judge is not required to set out each and every aspect of the evidence or to make specific findings on it. Whatever may have been said in the country material, which I find was properly considered by the Judge, it did not persuade the Judge that the appellant was telling the truth so far as his personal experiences are concerned. The Judge does not make any findings that may be seen to be suggestive of a failure to consider country information. This is not, for example, an appeal in which the Judge found the appellant credible in relation to all aspects of his claim but then found, notwithstanding such a finding, there was no risk as the country material did not suggest this was the case.

19. There was no credible evidence before the Judge on the basis of the findings made that the appellant had a credible adverse profile that will place him at risk by reference to the country material. I find no material legal error in relation to paragraph 4 of the appellant's grounds.

20. Paragraphs 1 to 3 engaged most of the discussions during the course of the error of law hearing. Drilling down to the basis of what is actually been asserted was an interesting exercise in which statements were made such that Judge had misconstrued the appellant's evidence and found the same to be unreliable when it was not; but the Judge clearly found it was for which adequate reasons are given. It was also argued that the Judge's findings were impacted by the misconstruing of the evidence and that impacted the balance the Judge gave when considering that evidence and that the Judge failed to consider the evidence in a relevant context. I find that this is, again, disagreement with the Judges finding and outcome without establishing procedural unfairness or irregularity in the manner in which the Judge assessed the evidence.

21. The assertion the Judge erred in failing to acknowledge there was another possible outcome to the appeal as set out in the appellant's

skeleton argument and evidence in the bundle does not established legal error on the decision actually made. It is recognised that different judges may come to different conclusions on the evidence in a particular case, as evidenced by dissenting judgements in Court of Appeal and Supreme Court decisions, but that does not mean that the decision that carries the day is legally incorrect. In this appeal there was one judge to make one decision and as indicated to Mr Forbes at the outset of the hearing it was for him to try and establish that that decision was outside the range of those reasonably available to Judge on the evidence.

22. I find no merit in the assertion the Judge failed to consider the evidence properly or to make a balanced assessment of the same, as a reading of the determination and that of Judge Smith clearly indicates to the contrary.

23. The argument that the construction of the statements of the Judge should have been different does not established legal error in the content of the determination.

24. Mr Forbes argued that the Judge should have given greater weight to the evidence of the witnesses who have knowledge of the country situation and who saw the reaction of the appellant which he submitted was due to the alleged ill-treatment. The difficulty with that submission is at the Judge clearly considered the witness evidence, does not dispute that witnesses have country knowledge, does not dispute that they may have seen the reaction in the appellant that they have recorded and what he is alleged to have said to them. In a mathematical equation A+ B = C, A will represent the country knowledge of the individual witnesses, C the reaction they claim to have seen in the appellant and what he said to them, with B being the reason why they came to that conclusion. The Judge clearly makes a finding that none of the witnesses actually saw for themselves the alleged ill-treatment which I find is factually correct. What therefore constituted the reason for the appellant's demeanour was not anything within their actual knowledge but what the appellant told them or demonstrated by his demeanour or what they speculated. The Judge had a much greater range of information available then what these witnesses claimed to have seen, and it was as a result of the holistic assessment that the Judge came to the adverse credibility findings.

25. The Judge has not misconstrued the evidence of the witnesses and clearly came to a finding that was felt to be appropriate on the material considered as a whole. Whilst the grounds set out further parts of the witness evidence that does not materially alter the conclusions reached by the Judge in this appeal.

26. One statement makes specific reference to events in 2014, 2015, and 2016 but even though there was none in 2016 as stated in the grounds, the alleged events predated the decision of Judge Smith in 2018 who found the claim that such events occurred was a lie and that the appellant had failed to establish that they actually occurred. Repeating claims that have been found to lack credibility without

adducing sufficient fresh evidence to warrant a judge departing from the earlier findings does not establish arguable legal error. The point of chronology is also relevant to Mr Forbes' reference to paragraph 4.1 of the screening interview in which there is reference to a 2016 incident but which, again, was found to lack credibility by Judge Smith.

27. The argument that the clear conclusions of the Judge were not justified on the basis of the contents of the statements is, in reality, disagreement with the weight the Judge was prepared to give to those statements.

28. However eloquently the appellant's case was presented by Mr Forbes the difficulty for the appellant is that having considered all the evidence with the required degree of anxious scrutiny, having made findings that are supported by proper reasons which reflect the Judges balanced assessment of the evidence, I find it has not been established that the dismissal of the appeal is outside the range of findings reasonably available to the Judge on the evidence and is neither perverse, irrational or based on a misunderstanding of the evidence or the law, and that disagreeing with the weight the Judge gave to the evidence and suggesting other findings the appellant would have preferred the Judge to have made to increase his chances of success, does not establish material legal error.

29. On that basis I dismiss the appeal.

Decision

30. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

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

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed……
Upper Tribunal Judge Hanson

Dated 18 August 2022