



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

Appeal Number: UI-2022-000468
(PA/52709/2021); IA/06792/2021

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 1 September 2022**

**Decision & Reasons Promulgated
On 7 October 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ZAA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Azmi instructed by Iris Law.

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

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Row ('the Judge') promulgated following a hearing at Birmingham on 10 December 2021.
- 2.** The appellant is a citizen of Sudan born on 1 January 1987.
- 3.** The appellant's original claim for asylum made on 10 April 2017, when he arrived in the United Kingdom, was refused in a decision dated 21 December 2017 and his appeal against that decision dismissed by

First-Tier Tribunal Judge Cope ('Judge Cope') on 10 September 2018. The appellant overstayed and on 3 December 2020 made a further claim for asylum which was accepted as a fresh claim pursuant to paragraph 353 of the Immigration Rules but refused on 24 May 2021.

4. The appellant relied on two grounds of challenge to the decision of the Judge, the first asserting the determination of the Judge is woefully lacking in rationale or adequate reasoning, and secondly the Judge erred in relation to the issue of witness evidence.
5. Permission to appeal was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal on 29th March 2022, the operative part of the grant being in the following terms:
 3. The Appellant's Grounds in essence asserts that the First-tier Tribunal Judge failed to give adequate reasons for rejecting the evidence of Peter Verney ("the Expert") and a witness of fact ("AEAA") both of whose evidence is said to support the Appellant's case that he is a non-Arab Darfuri and that he will be at risk on return to Sudan.
 4. As the Judge rightly reminded himself, the starting point for his assessment was the previous appeal decision. The previous Judge had found the Appellant not to be credible. Although the Judges summary of the Expert evidence at [20] to [24] appears to be consistent with both the note of the oral evidence and the supplementary report, it is arguable that the Judge thereafter failed to give adequate reasons to explain his conclusions at [37] that the evidence did not add "anything significant" to the earlier evidence which had been before the previous Judge.
 5. The grounds as they relate to the evidence of AEAA are weaker as the Judge did include in his summary that evidence at [25] to [31] of the Decision reasons why he did not accept the evidence. What is said at [38] of the Decision is therefore simply a summary of those reasons which are arguably adequate.
 6. I do not however limit the grounds that may be argued.

Error of law

6. Ground 1 asserts the following:
 - i. The Tribunal fails entirely to engage in any critical assessment of the lengthy report dated 11 November 2020, submitted by the expert, Peter Verney. The report addressed the previous Tribunal's determination paragraph by paragraph; thus clearly addressing the concerns of the previous FTTJ in this case, which led to him dismissing the appeal.
 - ii. Within the previous appeal determination dated 10 September 2018, the FTTJ criticised the initial report produced by Mr Verney for a number of reasons, as a result forming the conclusion that his evidence could not be relied upon and affording it little weight. The reasons included criticisms of the manner in which the report was prepared, and how Mr Verney was able to conclude the appellant was of Berti ethnicity as claimed. Mr Verney has addressed each specific criticism in detail in his supplementary report. For example, the previous FTTJ stated that the

initial report lacked a detailed consideration of the appellant's ethnic identity, which was and remains the core issue in the case. At paragraph 103 - 119 of his supplementary report, Mr Verney identifies all of the areas he considered, and explained why this consideration was sufficient. Mr Verney also continues to explain why the answers the appellant gave during his asylum interview relating to his ethnicity were correct and consistent and how he is able to form this conclusion. At paragraphs 134 - 136, Mr Verney also addressed the FTTJ's concerns as to how he was able to verify the answers the appellant gave in respect of the Berti tribe were correct, was given little weight. A further reason the previous appeal was refused is that the FTTJ suggested the appellant could have memorised the answers to the questions he was asked in respect of his ethnicity. Again in detail, at paragraphs 189 - 196, Mr Verney has explained his experience with the appellant why he feels this is not the case, whilst also indicating his past experiences with others where his opinion differed. Mr Verney has therefore provided full and detailed responses to each criticisms raised by the previous FTTJ, which is therefore highly relevant and significant to the outstanding issue in the current appeal.

- iii. No examination of the contents of the report dated 11 November 2020 despite this being a direct and detailed response to the previous concerns raised.
 - iv. The Tribunal fails to provide a singular reason why the report is not sufficient to overcome the previous findings.
 - v. Tribunal does not clarify the oral evidence and cross-examination of Peter Verney, and failed to recount any challenge to his evidence of (sic) give any reason why his evidence was not accepted.
- 7.** The Judge clearly considered the evidence that was made available and I find this was done with the required degree of anxious scrutiny. It is also settled law that the Judge was not required to set out each and every aspect of the evidence relied upon in the decision provided it was properly considered and the required holistic assessment of the material occurred.
 - 8.** The Judge was aware that there was a previous determination in relation to the appellant, heard by Judge Cope on 16 August 2018, who dismissed the appeal. The Judge refers to the location of the copy of that decision in the appeal bundle.
 - 9.** The Judge notes that before Judge Cope the appellant had given oral evidence and relied upon the expert report written by Peter Verney dated 15 June 2018.
 - 10.** The Judge clearly took the decision of Judge Cope as the starting point in accordance with the Devaseelan principles. The Judge does not, however, take that decision as being determinative of the issue and specifically refers to the new evidence, namely the supplemental report of Peter Verney dated 11 November 2020 and the oral evidence of Mr Verney, as well as the evidence from Mr AEAA.
 - 11.** The Judge made specific reference to paragraphs [76 - 87] of Judge Cope's decision in which Judge Cope wrote:

76. Although it may be something of a truism, it is of course for the Appellant to establish his case. Such an obligation extends to matters as basic as his racial identity and his ethnicity.
77. That being so, although I have considered the evidence as a whole from the Appellant himself and from Mr Verney I am unable to accept that it has been shown that it is reasonably likely, as opposed to being a possibility, that the Appellant is an African from Sudan and specifically that he is a member of the Berti tribe.
78. The difficulties with the views and conclusions about the credibility of the Appellant expressed in Mr Verney's report become even more apparent in the light of the evidence of the Appellant himself, whether oral or in written form, regarding his claimed adverse experiences in Sudan.
79. There was for instance no mention made by the Appellant in the SEF interview or by his solicitors in the further representations letter of him having been involved in a formal group of Berti students at University, and of them meeting every one or two weeks.
80. I have already mentioned in particular that the Appellant only put forward the incident involving him and others in the group at university being effectively kidnapped, forced to undress and to lie down in sexually suggestive positions, and being photographed, as late as his initial statement. No explanation has been put forward for his failure to mention this in for instance the SEF interview which would have been an obvious place to do so, or in the subsequent further representations letter.
81. My doubts about the veracity of the Appellant's account of this incident are only increased by the discrepancies in details that are. I note that at paragraph 6 of the initial statement the date of the incident is given as 22nd August 2010 whereas at paragraph 43 of the report he is recorded by Mr Verney as saying that the incident took place on 22nd October 2010. Similarly the Appellant in his initial statement said that there were four men and three women who were taken together whereas he is recorded at paragraph 42 of the report as saying that there were three men and two women.
82. Although I accept that the Appellant had referred at qq.48-49 of the SEF interview and at paragraph 8-9 of his initial statement to the incident with the car which hit a lamp post, it was only in that statement that there was any mention made of there being a physical altercation between him and his friends against the group that was trying to disrupt their meeting.
83. In addition there was again a basic contradiction between the Appellant saying at paragraph 8 of his initial statement that the incident with the car took place on 25th August 2010 whereas he is recorded at paragraph 43 of the report of as having told Mr Verney that this incident took place on 25th October 2010.
84. A further matter that was only mentioned by the Appellant as late as his initial statement was that on 13th September 2012 he had been involved in a Youth of Sidarat event, following which he was taken to the village security office and questioned about the activities of his

brother and cousins, and that he was made to sign a document before being released.

85. The final example that I would highlight of discrepancies and contradictions in what the Appellant has had to say about core events for his claim for international protection concerns when it was that his father was shot out by the Janjaweed militia when they raided the family home.
 86. According to the Appellant there were effectively two visits by the Janjaweed militia to the home, the first being on 7th July 2015 with there being a further visit from them the following day.
 87. At q.34 of the SEF interview the Appellant said that it was on the second visit of the Janjaweed that his father was shot at. By contrast at paragraph 17 of his initial statement he explicitly corrected the answer in the SEF interview by saying that it was not the second raid that his father was shot at but that it was the first raid. However the Appellant then went on to tell Mr Verney that his father was shot at during the second visit by the Janjaweed – see paragraphs 74-75 of his report. Finally in his oral evidence to me the Appellant returned to saying that the shooting at his father took place on the first raid.
- 12.** Judge Cope did not only consider Mr Verney’s report but concluded that the factors that pointed towards the appellant being a witness of truth are completely outweighed by the difficulties identified in the determination by reference to contradictions and omissions between the different accounts given by the appellant. It was also found there was a very high degree of implausibility concerning significant parts of the appellant’s claim which seriously affected his credibility. Taking such matters into account Judge Cope wrote:
91. Taking all of these matters into consideration I consequently do not accept that the Appellant has shown that it is reasonably likely that he has been telling the truth about events in Sudan and thus that he has a subjective fear of persecution for the reasons that he himself is given.
 92. I would make it clear that I simply do not believe that the events described by the Appellant as having happened to him actually took place. In particular whilst I accept that he is Sudanese citizen, I am not satisfied that he has shown even on a reasonable likelihood basis that he is from the Berti tribe; said he did it University or that the incident involving photographs being taken of him and others occurred; that an attempt was made to run him down; that he was accused of being involved in providing support to anti-government forces; that raid took place on his house in which his father was shot at, and his brother and cousins detained; that he himself was specifically sought by the Janjaweed militia; that his wife is now pregnant to a member of the militia; or that as a result of the adverse interest shown in him that he had to leave the down.
- 13.** There is no evidence that the appellant successfully appealed the determination of Judge Cope.
- 14.** The Judge also had available the up to date Secretary of State’s Reasons for Refusal letter dated 24th May 2021, which makes specific comment upon the supplementary expert report of Mr Verney dated

11 November 2020 in the following terms (reference in the refusal letter to 'the Judge' is to Judge Cope):

Supplementary Expert Report – Mr Peter Verney – 11 November 2020

22. Firstly, reference is made to the applicable caselaw of AA Somalia (Expert evidence, assessment) [2004] UKIAT 00221. In this case the Tribunal consider an expert report and state that an individual purporting to give an expert opinion must demonstrate that he is in reality an expert in relation to those matters on which he is expressing his opinion, and that he has current and reliable knowledge as to those matters.
23. As per the Judge's findings, and that of the Home Office, it is accepted that Mr Verney is an expert in the relevant field and the Judge stated he had encountered a number of Sudanese appeals where his reports assisted consideration (paragraphs 52 – 53, AD). The Judge did not find that the report confirmed that you were from the Berti tribe.
24. Mr Verney's new report now comments on the Judge's findings.
25. Addressing the Judge's findings regarding the presentation of your tribe/clan/subtribe, Mr Verney maintains that you have only presented the Berti Jellaba and that variations in English spelling have presented these as different tribes (paragraphs 3 – 5, 44 – 94).
26. This is addressed by the Judge in the below sections of the First Tier promulgation:
 - “39. In their letter seeking permission to withdraw the concession the Home Office presenting officers' unit argued that the Appellant had given three different ethnic groups for his tribal identity.
 40. That appears to be correct – at section 1.13 of the screening interview the Appellant is recorded as saying he was from the Galabah/Howary tribe; in the initial representations letter it is stated that he is from the Barta/Galabah tribe and that there is no Howary tribe; and at qq.3-4 and 54 of the SEF interview he is said that he is from the cello bar sub-tribe of the Berti tribe [sic – spellings and formats as they appear in each of the three documents].
 41. I should here say that the spelling Barta/Galabah tribe is as was used by the Appellant solicitors in the initial Representations letter sent to the Respondent, a copy of which is contained in her bundle.
 42. Since the SEF interview the Appellant has continued to claim that he is a member of the Berti tribe, and on occasion has also said that he is from the Gellabah, Jelabah, Jallaba or Yalaba sub-tribe [again sic – all of these spellings have been used at different occasions in the asylum application and appeal process].
 43. On the face of it then there are major discrepancies in what the Appellant has said throughout his claim for international protection on what after all is a central issue in his case – I see no reason not to accept the arguments identifying three different tribal groups in Sudan made in the Home Office presenting officers' unit's letter and the supporting background evidence attached or referred to in

- that letter. As such an explanation is clearly required from the Appellant.
44. Given that it was then not at issue, the Appellant has not said anything about his tribal identity in his initial statement. However in his supplementary statement at paragraphs 1-2 he has said that the Berti tribe is the correct name for the tribe that he comes from, but throughout his asylum claim he had had problems with the interpreters who had delivered the name incorrectly.
 45. The Appellant maintained this explanation during the course of his oral evidence to me at the hearing.
 46. I would accept in principle that can be difficulties with Interpreters used at initial interviews upon arrival because I am aware that the Respondent appears to make widespread use of telephone or other communication methods in such interviews between the applicant for international protection and the interpreter being used.
 47. That however does not explain why there should be the same difficulty about interpretation of the name of the Appellant's tribe when he was giving instructions to his solicitors before they wrote the initial representations letter in which they provided details of what he was saying his tribal identity was. Indeed I note that this explanation in any event was not put forward in that letter.
 48. Furthermore the explanation again was not put forward in the SEF interview or in the further representations letter despite the Appellant being explicitly asked at q.4 of the SEF interview as to why he had said Gellabah Hawari [sic] in the screening interview.
 49. It is possible that similar mistakes could be made by different interpreters, but without more I do not consider it to be reasonably likely that this occurred."
27. I consider that the Judge has acknowledge, and given dispensation, to the use of different interpreters and spellings encountered. I am satisfied that the Judge understood this potential for confusion, and he has clearly made references to "tribe" and "sub-tribe".
 28. Mr Verney clarifies the various spellings stating in his supplementary report:
 - "69. The Arabic and English alphabets do not have automatic or fixed equivalents for several of the vowels and consonants. 70. In this way, 12 Yalaba, Jelabah, Gellabah, Jallaba, "cello bar" and so on are just attempts by English interviewers to render the sound of the same name."
 29. However, Mr Verney goes as far as to defend the submission of "Hawari" as not being a discrepancy, but rather an interpreting error which you sought to rectify at interview. I have considered that the Judge had access to all material, including the interviews where you submitted this and where you were later questioned about this. It is evident that no explanation has been given for such mistake the Judge does not accept that this interpreter error would have likely occurred.
 30. It is therefore determined that the Judge had considered reasons for inconsistencies and maintained that this damaged your credibility.

31. Furthermore, the expert does not present alternative explanations of the “Hawari” submission, such as whether this could be a further tribe of Sudan. Searches made on the public domain return an ethnic group from Sudan with a similar name, the Hawawir, a nomadic Arab ethnic group of Sudan, as cited on the Joshua Project website (accessed on https://joshuaproject.net/people_groups/12074/SU on 30 April 2021).
32. Mr Verney states that:
- “53. The existence of the Berti Jellaba can be verified by consulting people from the Berti tribe in the UK and academic specialists.
54. I have consulted in the past with Dr Jérôme Tubiana, whose work has been cited by the HO in other Darfur cases, with Professor Abdalla El Tom of Dublin University, an anthropologist who is himself from the Berti tribe, and with Ismail Yagoub, a certified Arabic language interpreter who is also from the Berti tribe.
55. I can confirm with confidence that the Berti Jellaba are among the most well-known of the Berti clans.”
33. Whilst Mr Verney states that these colleagues support the existence of the Berti Jellaba clan, the actual question and answer that Mr Verney received have not been provided nor has any objective information been cited to assist with considering this further. Furthermore, this also does not explain your inconsistency in presenting your tribe name.
34. Information supports that the Jellaba constitute an Arab group from northern Sudan, as cited in a report, ‘Unsimplifying Darfur’, Genocide Studies and Prevention: An International Journal dated July 2006:
- “control over the Arab militias operates within three circles: the first consists of local leaders, including traditional chiefs, politicians and intellectuals ... , the second involves Darfur-based Arab personalities, army men and politicians, close to the seats of power in Khartoum, who act as intermediaries between Khartoum and local leaders ... , [and] the third refers to the hard-liners in Khartoum, i.e. Jellaba Arabs from north Sudan, specifically Shagiya Arabs. This Shagiya circle would seem to have gained sufficient weight to challenge president al Beshir himself, also a Jellaba, but who belongs to the Jaalin group.” (accessed on <https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1252&context=gsp> on 30 April 2021)
35. Jellaba are also cited in an online report from Cultural Survival, ‘Land Alienation and Genocide in the Nuba Mountains’, Sudan dated December 1998 which stated:
- “The Baggara and Jellaba are Arabic-speaking Muslims who migrated to the Nuba Mountains, in several waves since the turn of the 17th century, for slave raiding and trade” (accessed on <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/landalienation-and-genocide-nuba-mountains-sudan> on 30 April 2021)
36. Other sources refer to the Jellaba as Arab including a book ‘Darfur, A New History of a Long War’, 2008 which quotes, “plus two categories of Arabs: Jellaba and Rizeigat” (accessed via Google Books on 30 April

2021) and from the Sudan Open Archive, Ethnicity From Perception to Cause of Violent Conflicts: The Case of the Fur and Nuba Conflicts in Western Sudan, 8 July 1997 which stated:

“The Arab tribes in Darfur (mainly pastoralist nomads) consist of the Habania, Beni Hussein, Zeiyadiya, Beni Helba, Djawama, Rezeigat, and the Maharia, in addition to the Arab urban merchants and government officials mainly of Jellaba origin. These communities formed what is known as the Arab Congregation in the mid-1980s, an alliance designed to lobby for official and financial backing from both the central government and the national political parties in support of the cause of the Arabs in the region.” (accessed on <https://www.sudanarchive.net/?a=d&d=SLPD19970708-01.1.6&e=-----en-20--1--txt-txIN%7ctxTI%7ctxAU-----> on 30 April 2021)

37. Further sources from the public domain suggest there is also a Jellaba Howara tribe although these are less reliable. Considering this information, and absence of Mr Verney identifying further possible groups and clarifying these, causes issue with this matter.
38. Considering the existence of these similarly named tribes, and no objective information located or provided to support the existence of the Berti Jellaba tribe, the Home Office’s finding of inconsistency, supported by the Immigration Judge, is maintained.
39. Mr Verney also comments on appearance and accent in paragraphs 146 - 159 of his report. With regards to accent, dialect and language, he has stated:
 150. I reiterate my observations regarding appearance and accent. I could notice his appearance and accent because I have dealt with a range of different Sudanese people over 40 years.
 151. I would not expect them to be noticeable to anyone unfamiliar with Sudanese people. To explain them is like - for example - describing a Welsh accent to a non-Welsh person.
 152. I have in the past consulted linguistic experts, but have also found that a thorough linguistic study uses terminology which is opaque to nonspecialists. That is, when given as evidence in court or when put before the HO, they are not understood.
 153. The interpreter I worked with spoke a version of contemporary Arabic.
 154. I must emphasise that there is no standardised modern Arabic that works for all interviewees.
 155. Because I speak Sudanese Arabic, I was able to follow what was said in the interview by the interviewee and the interpreter.”
40. The Home Office often handles and considers linguistic reports which are able to explain subtle differences between accents and dialects to assist non-expert in the matter. Experts use explanations of the expected features compared to the encountered linguistic features, such as lexicon, morphology, vocabulary, etc., producing a simple hypothesis conclusion for non-experts. Mr Verney presents that he observes differences, but he does not explain these in his report. An Arabic interpreter was used at interview, demonstrating that he is not

an expert in Arabic language to produce such findings, nor does he claim to be such.

41. However, it is noted from the extract of Sudan Studies, Number 59 dated January 2019 that Mr Verney cites some of the differences between Arabic dialects, including nuances and differences in dialects within Sudan, yet he has not explained those encountered in your own speech to support your claim. These differences are clearly explained in Mr Verney's separate document and are comprehensible to the reader, therefore, Mr Verney's presentation in his report that such would be 'opaque to nonspecialists' and 'not understood' is not a reasonable explanation for not elaborating.
42. Mr Verney asserts that you would be identified as non-Arab Darfuri based on your appearance and he states:
 156. The IJ refers to AIR Q61, which is about distinguishing marks of the Jellaba clan, and not about general appearance.
 157. I must emphasise that they do not have distinguishing marks. This is not a realistic expectation.
 158. There are other aspects of general appearance that would alert a Sudanese to his non-Arab identity, such as hair, facial features and so on.
 159. However, these are impossible to describe in terms that would be understood by the HO or the court, especially via an interpreter, as they are too subtle."
43. The Home Office's fact-finding mission to Khartoum, Sudan Published November 2018 stated regarding identification:
 - 1.7.4 The university professor from Darfur (UP) thought: 'There is a cultural distinction between Arab and non-Arab Darfuris (NADs). Identification is a universal problem (from an anthropological perspective).
 - 'From a social/political view, identities are socially constructed. People distinguish themselves as NADs of differing types or as Arabs of differing types. Classification may be overt or covert; it has nothing to do with biology: Darfuris look the same. UP said if there were 10 Darfuris round a table you could not tell who was Arab, who was non-Arab. The differences lie in the language they talk or the way they claim their history and genealogy.
 - 'A non-Arab can become an Arab. People can disappear across a border and join a new group and be dealt with according to the newly acquired identification. In this way, after 20 years, an African could be treated as an Arab. A NAD who becomes Arab will be treated as an Arab. Culture and language is the only distinction.
 - 'The rest of Sudanese society is ethnically mixed. But Sudanese are clear about labels - this is all cultural and due to the history of migration, from north to south (Sudan), from West Africa and the Arabian peninsula. Before air travel, people travelled through Sudan for the Hajj. As a result, ethnic groups have mixed over the centuries. UP cited an American professor who, in the 1980s, wrote that up to 1/3 of present-day Sudanese were of West African origin. However, northern Sudanese would dispute this. So

identities are social constructs. The disappearance of people into other groups has been happening for years.”

44. The report specifically quotes the king of the Berti, who stated:

“1.7.8 The King of the Berti considered it

‘[h]ard to distinguish Berti from other Sudanese / Darfuris, which is why it is hard to give an estimate of the size of the tribe. They don’t have their own language, often inter-marry with other groups and are prone to integrate with other groups. Their features are less markedly “African” [the 2nd pol sec noted that the Berti are from North Darfur, tend to be less “African” - having similar features to the Zaghawa, both being the most Northern tribes]. Inter-marriage with Arabs less common than it is with other Darfuri tribes.’”

45. It also states however that:

“1.7.11 The civil society activist thought

‘[i]t is possible to recognise Darfuris by their facial features. For example, in May 2008 during JEM attack on Khartoum the security forces used to stop buses and ask certain people (Darfuris) to get off because they had been recognised and could be identified from others. The features of NADs, Nuba and Arab Darfuris are different.

‘It is also possible to identify a Darfuri by the way they speak - anyone who speaks a local language most likely speak Arabic with an accent. This is the same for other groups too, such as Nuba. People from the Berti tribe can be recognised by their features too, even though they have lost their language.’”

46. Considering the objective information, it is noted that Mr Verney in part agrees that the distinctions are blurred. However, Mr Verney cites he believes you to be Berti based on his interaction with you, therefore, it is reasonable to expect that Mr Verney could attempt to better describe and explain the subtle features that would distinguish you to the Sudanese authorities and society. He has however, similarly to accent, cited that these are impossible to describe in terms that would be understood.
47. The expert has therefore failed to explain the features of your appearance that he believes would cause you to be perceived as non-Arab Darfuri or provide objective information that would assist with this in light of CPIN suggesting this may or may not be distinguishable.
48. Considering Mr Verney’s representations regarding your appearance and accent, I do not find that he has provided reasonable explanation or evidence to guide the Home Office to depart from the Judge’s findings that the you are not of the Berti tribe. The 16 lack of explanation from the expert does not assist sufficiently to establish you would be perceived as being a non-Arab Darfuri.
49. The expert has also made criticisms about your interview in his report (paragraphs 160 - 164, 177 - 181), stating that you were rushed, felt you had not been given time to answer and you were told to move on. The expert criticises the interviewer’s knowledge of Sudan. I consider paragraph 160 to 199 of the report are largely criticisms of the interview, Home Office decision and subsequent Judge findings. The

expert maintains that you answered correctly questions about your tribe and that his personal opinion was that you were not reciting memorised answers in his own conversation.

50. I have carefully considered these representations but all these matters have already been put before the Immigration Judge. Giving regard that all the material and information relied upon, from Home Office records to Mr Verney's initial report, this was presented before the Immigration Judge who came to his conclusion:

"75. The level of detail could be seen as being indicative of someone who is from the Berti tribe as the Appellant claims he is. Once more though it could be the situation that this is learned information or that it is known by him through having lived in Sudan, possibly with Berti neighbours, but not actually being from the tribe.

76. Although it may be something of a truism, it is of course for the Appellant to establish his case. Such an obligation extends to matters as basic as his racial identity and his ethnicity.

77. That being so, although I have considered the evidence as a whole from the Appellant himself and from Mr Verney I am unable to accept that it has been shown that it is reasonably likely, as opposed to being a possibility, that the Appellant is an African from Sudan and specifically that he is a member of the Berti tribe.

78. The difficulties with the views and conclusions about the credibility of the Appellant expressed in Mr Verney's report become even more apparent in the light of the evidence of the Appellant himself, whether oral or in written form, regarding his claimed adverse experiences in Sudan.

79. There was for instance no mention made by the Appellant in the SEF interview or by his solicitors in the further representations letter of him having been involved in a formal group of Berti students at University, and of them meeting every one or two weeks.

80. I have already mentioned in particular that the Appellant only put forward the incident involving him and others in the group at university being effectively kidnapped, forced to undress and to lie down in sexually suggestive positions, and being photographed, as late as his initial statement. No explanation has been put forward for his failure to mention this in for instance the SEF interview which would have been an obvious place to do so, or in the subsequent further representations letter."

51. The Judge also considered that there were discrepancies that damaged your credibility:

"80. I have already mentioned in particular that the Appellant only put forward the incident involving him and others in the group at university being effectively kidnapped, forced to undress and to lie down in sexually suggestive positions, and being photographed, as late as his initial statement. No explanation has been put forward for his failure to mention this in for instance the SEF interview which would have been an obvious place to do so, or in the subsequent further representations letter.

81. My doubts about the veracity of the Appellant's account of this incident are only increased by the discrepancies in details that are. I note that at paragraph 6 of the initial statement the date of the incident is given as 22nd August 2010 whereas at paragraph 43 of the report he is recorded by Mr Verney as saying that the incident took place on 22nd October 2010. Similarly the Appellant in his initial statement said that there were four men and three women who were taken together whereas he is recorded at paragraph 42 of the report as saying that there were three men and two women.

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83. In addition there was again a basic contradiction between the Appellant saying at paragraph 8 of his initial statement that the incident with the car took place on 25th August 2010 whereas he is recorded at paragraph 43 of the report as having told Mr Verney that this incident took place on 25th October 2010.

84. A further matter that was only mentioned by the Appellant as late as his initial statement was that on 13th September 2012 he had been involved in a Youth of Sidarat event, following which he was taken to the village security office and questioned about the activities of his brother and cousins, and that he was made to sign a document before being released.

85. The final example that I would highlight of discrepancies and contradictions in what the Appellant has had to say about core events for his claim for international protection concerns when it was that his father was shot out by the Janjaweed militia when they raided the family home.

86. According to the Appellant there were effectively two visits by the Janjaweed militia to the home, the first being on 7th July 2015 with there being a further visit from them the following day.

87. At q.34 of the SEF interview the Appellant said that it was on the second visit of the Janjaweed that his father was shot at. By contrast at paragraph 17 of his initial statement he explicitly corrected the answer in the SEF interview by saying that it was not the second raid that his father was shot at but that it was the first raid. However the Appellant then went on to tell Mr Verney that his father was shot at during the second visit by the Janjaweed - see paragraphs 74-75 of his report. Finally in his oral evidence to me the Appellant returned to saying that the shooting at his father took place on the first raid.

88. I have given as much credit as I can to the Appellant for the aspects of consistency that I accept that there are in his claim to be at risk of death or persecutory illtreatment if he were to be removed to Sudan.

89. In my judgment however the factors which might point towards the Appellant being a witness of truth are completely outweighed by the difficulties that I have identified above. Whilst I would accept that some at least of the contradictions or omissions between the different accounts given by him might not in themselves lead to his appeal being refused there are so many difficulties, many of them significant in themselves, with the evidence that they cannot be classed as peripheral or unimportant.

90. In addition there is the very high degree of implausibility concerning significant parts of the Appellant's claim that I have set out above. In my judgment this seriously affects his credibility in an adverse way.

91. Taking all of these matters into consideration I consequently do not accept that the Appellant has shown that it is reasonably likely that he has been telling the truth about events in Sudan and thus that he has a subjective fear of persecution for the reasons that he himself has given.

92. I would make it clear that I simply do not believe that the events described by the Appellant as having happened to him actually took place. In particular whilst I accept that he is Sudanese citizen, I am not satisfied that he has shown even on a reasonable likelihood basis that he is from the Berti tribe; that he face the difficulties that he said he did at university or that the incident involving photographs being taken of him and others occurred; that an attempt was made to run him down; that he was accused of being involved in providing support to anti-government forces; that a raid took place on his house in which his father was shot at, and his brother and cousin's detained; that he himself was specifically sought by the Janjaweed militia; that his wife is now pregnant to a member of the militia; or that as a result of the adverse interest shown in him that he had to leave Sudan."

52. Considering the Judge's findings as the starting point, against the new information presented by Mr Verney's supplementary expert report, it is not satisfied that sufficient evidence has been presented to find error in the Judge's findings or cause reason to depart from these findings. It is clear from the country information that distinction of the Berti can be difficult, and for this reason the credibility findings are an important matter in your case. In absence of more clear and concise evidence to support your claim, there is insufficient reason to depart from the Judge's findings.
53. As it is determined that you are not a member of the Berti tribe and you are not from a non-Arab Darfuri tribe, it is not found that you not be at risk upon return to Sudan on the basis of your race.
- 15.** The supplementary report begins by acknowledging an error in the initial report identified by Judge Cope but states that bar that exception Mr Verney stands by the contents and conclusions of his initial report.
- 16.** From [3] of the supplementary report Peter Verney comments upon issues raised in the refusal letter, comments upon specific findings made by Judge Cope and comments why, in Mr Verney's opinion, he

was either right in his conclusion or there is a simple or logical explanation why Judge Cope was wrong.

- 17.** It was noted at [44] of the supplementary report by Peter Verney that in light of the Home Office withdrawing its earlier concession with regard to the appellant's claim to be of Berti ethnic identity that matter was one of the central issues in the appeal.
- 18.** Peter Verney criticises the decision-maker in the refusal letter in claiming the appellant given three ethnic identities and provides an explanation for why this is so based on a far more detailed discussion than was before Judge Cope.
- 19.** The comment by Peter Verney at [63] that the appellant had been consistent throughout and that the only variation came from his interpreters and interviews is noted, but credibility was a matter for the Judge. Mr Bates criticised Mr Verney before me on the basis he appeared to be advocating on the appellant's behalf rather than providing an objective country report.
- 20.** I do accept, as submitted by Mr Azmi, that the supplementary report contains far more detail than had been provided previously, specifically comments upon Judge Cope's findings, and was before the Judge who also had the benefit of Peter Verney giving oral evidence.
- 21.** In the grant of permission to appeal the Judge's findings at [37] are said to be insufficient. In that paragraph the Judge wrote:
 37. There has already been an adjudication in this matter. Judge Cope considered the evidence of the appellant and of Dr Verney and rejected it. There is nothing in Mr Verney's most recent report oral evidence which adds anything significant to what he has said before and which was rejected by Judge Cope.
- 22.** That statement cannot be considered in isolation of the other findings by the Judge in which consideration is given to the new evidence of Mr Verney between [19 -24]; in which the Judge writes:
 19. Much of Mr Verney's report concerns the history of our current situation in Sudan. On the key issue of whether the appellant is a non-Arab Darfuri, and in particular of the Berti tribe, Mr Verney was able to clarify his evidence.
 20. He had reached the conclusion because the appellant had given him answers which demonstrated knowledge of the customs of the Berti tribe. He had given the Home Office similar answers. The appellant's evidence was consistent with the country background about the treatment of non-Arab Darfuris. Nothing the appellant said that he had raised any concerns. He had come across appellant Sue had crib sheets in Arabic setting out what answers should be given when questioned about their ethnicity. He had no such concerns in the case of the appellant.
 21. Mr Verney said that there were no physical characteristics which distinguished a member of the Berti tribe. There were linguistic characteristics of accent and dialect. Berti was not a separate language but a member of the tribe could be identified by these characteristics. Mr Verney said that although he spoke vernacular Arabic he did not have a sufficient command of the language to be able to identify the

appellant as a member of the Berti tribe on linguistic grounds. He did not claim that expertise.

22. Mr Verney's reasons for accepting Arabic, that the appellant was a member of the Berti tribe were much the same as had been expressed in his first report. They are set out in Mr Verney's conclusions in that report at page 102 in the bundle.
 23. Mr Verney did clarify one other matter. In the screening interview the appellant had said that he was a member of the Galabah/Howary clan. The Howary clan apparently does not exist. It was one of the matters that the respondent pointed to as a discrepancy in the appellant's account. The appellant had corrected to this apparent discrepancy in a letter from his solicitors dated 13 June 2017 and in the asylum interview. This was after he had taken legal advice and had had time to consider his position.
 24. The view of Mr Verney was that this must be in a mistaken interpretation as the Howary plan does not exist. That was the appellant's evidence as well. That is one interpretation. Another is that the appellant gave an incorrect answer because he is not a member of the Berti tribe and therefore had insufficient knowledge at that time. This was a situation which he subsequently rectified.
- 23.** The Secretary of State has filed a Rule 24 reply dated 24th May 2022 opposing the appeal in which it is written:
3. The ground deemed to have most merit by the UTJ granting permission is ground 1. It is the SSHD's position that the FTTJ did not err in his consideration of the report of Dr Verney. It is submitted that the FTTJ did not simply discount the report for "not adding anything significant". It is submitted that the FTTJ fully considered the report whilst having in mind and correctly applying Deevaseelan to the earlier decision and first Judge's findings. The FTTJ fully considers the report at [19-24] noting at [22] that his reasons for accepting the appellant was a member of the berti tribe was much the same as expressed in his first report. The grounds do not undermine this finding and it is submitted this is a very valid reason for giving it little weight or consideration. At [23 and 24] he makes a finding on Mr Verneys view confirming the evidence of the appellant that he named a clan which did not exist in his SCR due to an issue with the interpreter, presumably a new aspect of his report not before the last IJ. The FTTJ found in favour of the respondent that the appellant gave an incorrect answer because he is not a member of the berti tribe and rectified his answer after having the benefit of legal advice and time to consider it. As noted by FTJ Komorowski in refusing PTA the grounds do not detail which aspects of Dr Verneys report or oral evidence justify the judge departing from the first IJ's findings on Dr Verneys evidence. It is submitted that this ground amounts to a disagreement with the findings.
 4. The SSHD is in agreement with the First and Upper Tier Judge consideration in their PTA decisions that the other grounds are even weaker. For completeness it is the SSHD's position that the FTTJ did not err in his consideration of the witness evidence. The FTTJ has not taken issue with the witness having been granted asylum but has noted that his interview transcripts could've been provided by the appellants representatives to show that what he said to the Home Office is

consistent with the appellants account. Even without making this finding the IJ has made the entirely sustainable observation that despite claiming to have been in touch at the time of his previous appeal he did not give evidence [30].

5. Finally in response to the ground relating to the absence of a marriage certificate it is submitted that the finding that this document could've reasonably been provided is open to the FTTJ, the burden of proof is obviously on the Appellant and his witness to prove the assertions they make, including the marriage which as observed the FTTJ could've been obtained.
- 24.** Case law in relation to inadequate reasons challenges is settled: in Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that
- (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge;
 - (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.
- 25.** In VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC) it was held that
- (i) An application for permission to appeal on the grounds of inadequacy of reasoning in the decision of the First-tier Tribunal must generally demonstrate by reference to the material and arguments placed before that Tribunal that (a) the matter involved a substantial issue between the parties at first instance and (b) that the Tribunal either failed to deal with that matter at all, or gave reasons on that point which are so unclear that they may well conceal an error of law.
 - (ii) Given that parties are under a duty to help further the overriding objective and to co-operate with the Upper Tribunal, those drafting grounds of appeal (a) should proceed on the basis that decisions of the First-tier Tribunal are to be read fairly and as a whole and without excessive legalism; (b) should not seek to argue that a particular consideration was not taken into account by the Tribunal when it can be seen from the decision read fairly and as a whole that it was (and the real disagreement is with the Tribunal's assessment of the evidence or the merits); and (c) should not challenge the adequacy of the reasons given by the First-tier Tribunal without demonstrating

how the principles in (i) above have been breached, by reference to the materials placed before that Tribunal and the important or substantial issues which it was asked to determine in that particular case.

- 26.** It was noted in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.
- 27.** An informed reader of the material in this case can understand why the Judge came to the conclusion set out in the determination in relation to the appellant's ethnicity, although to do so it is necessary to read all the available evidence and not just focus upon the supplementary report of Peter Verney.
- 28.** Returning to the Devaseelan principles, the correct approach to cases where there is an earlier decision was recently considered by the Court of Appeal in Secretary of State the Home Department v Patel [2022] EWCA Civ 36 in which reference was made to two earlier decisions of the Court of Appeal in Ocampo [2006] EWCA Civ 1276 and AL (Albania) [2019] EWCA Civ 950.
- 29.** The Court of Appeal in Patel approved the submissions made on behalf of the Secretary of State that the guiding principles could be expressed as follows:
- (i) Where there are different parties that the material overlap of evidence the Devaseelan principles of fairness apply with appropriate modification.
 - (ii) But what fairness requires will depend on the particular facts of the case. The findings of an earlier FTT hearing will be an important starting point but the second FTT judge cannot avoid the obligation to address the merits of the case on the evidence then available.
 - (iii) The second FTT judge necessarily will look for a very good reason to depart from the earlier findings. Whether the evidence could have been adduced at the previous hearing may be relevant to that issue. Equally, a very good reason may be that the new evidence is so cogent and compelling as to justify a different finding.
- 30.** The main assertion by the appellant at this stage is that the evidence of Peter Verney was so cogent and compelling that it justified a different finding to be made when considering the evidence as a whole. That was not as found by the Judge for sustainable reasons.
- 31.** As I find a reader of the determination can understand why the Judge concluded as he did in relation to the appellant's ethnicity those reasons must be adequate. The appellant does not establish material error on Ground 1.

32. In relation to Ground 2, the appellant refers to the fact the witness provided a witness statement clarifying he was granted asylum on the basis of being from the Birti tribe and asserting that this matter did not appear to have been in dispute, the respondent was aware of the witness in advance and there was no dispute as to the basis of his asylum grant or his bona fides, and that placing little weight on that evidence was “unsafe”. The Grounds assert it is unclear from the determination whether or not the witness or the appellant was asked about why he had not given evidence previously and that the absence of evidence of the marriage between the witness’s sister and the appellant’s brother was only tenable if such evidence could reasonably be expected. It is argued the determination is silent on the Judge’s knowledge of Darfurian marriage customs in the Judge’s finding.
33. The Judge clearly considered the evidence of the witness AEAA and finds he had not provided documents relevant to his own asylum claim which would have been readily available to confirm the credibility of the same at [38].
34. When a person is granted asylum they do not receive a reason for refusal letter setting out the basis for the same as they would if the application for international protection is refused, but if the witness had been interviewed there will be transcripts of the interview and other material showing what aspects of the claim were challenged by an interviewer.
35. Mr Bates referred to case law relating to the weight to be placed on evidence that could have been reasonably provided but which was not. Proceedings before the First-tier Tribunal are adversarial, there was no concession before the Judge in relation to AEAA’s evidence supporting the appellant’s claim or in relation to the marriage certificate. The Judge’s finding that insufficient evidence had been provided to corroborate the claims being made is a finding within the range of those available to the Judge on the evidence.
36. In conclusion, although the appellant disagrees with the Judge’s assessment of the evidence and seeks a more favourable finding to enable him to remain in the United Kingdom, the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

37. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

38. 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 1 September 2022