



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006258

First-tier Tribunal No:
PA/53925/2021; IA/11379/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 May 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

B A-K K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferguson, Counsel instructed by CK Solicitors
For the Respondent: Mr T Melvin

Heard at Field House on 11 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

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.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge S Dyer promulgated on 26 October 2022 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 30 July 2021, refusing his protection and human rights claims. The Appellant claims that he will be at risk on return to Sudan.
2. The Appellant is a black African Muslim from Khartoum. His core protection claim is that he will be at risk due to a consensual sexual relationship which he had with a young girl before he left Sudan. The Appellant was himself a minor when he left Sudan. The Appellant claims that he will be at risk from the girl’s family. He also claims that the girl has been killed by her family. He says that he will also be at risk from the authorities as extra-marital relationships are illegal under Sharia law and that he will face a severe penalty for that reason. The Appellant claims that he will also be at risk on return as a failed asylum seeker who left Sudan illegally and as a (non-Arab) black African.
3. Judge Dyer rejected the Appellant’s protection claim (as had the Respondent) on the basis that it lacked credibility. She also found at [22] of the Decision that she had no evidence about what punishment the Appellant would face even if his claim were true. She went on to consider the Appellant’s claim to be at risk on account of his profile as a failed asylum seeker who is also a non-Arab black African and who had left Sudan illegally. She found at [26] of the Decision that the Appellant would not be at real risk of persecution on that account.
4. The Appellant appeals on two grounds which can be summarised as follows:

Ground 1 ([3] to [4] of the grounds): the Judge failed to consider background evidence in relation to the crime which the core claim constituted. It is asserted that, had the Judge considered this evidence, she might have reached a different conclusion in relation to the credibility of the claim.

Ground 2 ([5] to [6] of the grounds): the Judge also failed to have regard to background evidence in relation to the risk to a failed asylum seeker having left Sudan illegally and, in that context, made a mistake of fact in finding that the Appellant left Sudan on his own passport (the inference being, it is asserted, that the Judge found that the Appellant was not of interest to the authorities and would not be of interest to them because he left Sudan legally).
5. Permission to appeal was granted by First-tier Tribunal Judge Kelly on 29 December 2022 in the following terms:

“The learned judge cannot be blamed for failing to consider HM Government’s travel advice relating to Sudan given that it was simply hyperlinked to his Appeal Skeleton Argument rather than being (as it should

have been) included within an indexed and paginated bundle of documents, and referred to by Counsel during the course of the hearing. It is nevertheless arguable that in overlooking of this evidence the Tribunal made an error of law that was capable of affecting the outcome of the appeal [22].

Whilst the remaining grounds are weaker in my view, they may nevertheless be argued.”

6. The matter comes before me to decide whether the Decision does contain an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.
7. I had before me a core bundle of documents relating to the appeal, the Appellant’s and Respondent’s bundles before the First-tier Tribunal ([AB/xx] and [RB/xx] respectively) and a skeleton argument submitted by Mr Melvin for the hearing before me.
8. Having heard submissions from Ms Ferguson and Mr Melvin, I indicated that I found there to be no error of law in the Decision and that I would provide my reasons for that conclusion in writing which I now turn to do.

DISCUSSION

9. The Appellant’s first ground focusses on what is said at [22] of the Decision which reads as follows:

“I have not been provided with nor has any reference been made to any expert evidence, country information or other corroborative evidence with regards to the laws of Sudan nor do I have any evidence on whether the appellant may have committed any crimes as a result of his claimed relationship with [M] nor any consequences of the claimed relationship. The appellant has repeatedly asserted in his various written statements that *‘The religious Islamic doctrine is very harsh and the penalty for such a forbidden relationship is death ...I know I am a wanted person by the Police in Sudan and I fear I will be arrested and killed for having a forbidden relationship outside of marriage...’*; however I have no other evidence before me with regards to the punishment under shariah law, if that is the applicable law, for sexual relationship outside marriage between individuals who would be considered minors in the UK. I do not know the age of majority in Sudan nor what offence he has allegedly committed or on what basis he ‘knows’ he is wanted. There is no background context against which I can assess the appellant’s claim. This is evidence that it would have been reasonable to expect the appellant’s lawyers to obtain. I do not accept the appellant’s assertions as evidence of the laws of Sudan.”

10. The evidence which the Judge is said to have overlooked is travel advice issued by the Foreign Office in the UK (“the Travel Advice”). As is pointed out in the grant of permission, the only reference to that advice is a footnote in Ms Ferguson’s skeleton argument before Judge Dyer. The footnote is to a submission that the authorities would have an interest in the Appellant as a result of the relationship and that the Judge needed to

consider “whether the authorities would have interest in him for this offence/whether he would be prosecuted for it”.

11. As is pointed out in the grant of permission, the Travel Advice does not appear in the bundles and other than the footnoted reference is not cited in the skeleton argument; nor is there any reference to a submission being made to the Judge based on this advice. Nonetheless, and given the terms of the grant of permission, it is appropriate to consider what this document says which is as follows (so far as relevant):

“Local laws and customs

Local laws reflect the fact that Sudan is predominantly Muslim. You should respect local traditions, customs, laws and religions at all times and be aware of your actions to ensure that they do not offend other cultures or religious beliefs, especially during the holy month of Ramadan or if you intend to visit religious areas.

Sudan operates Islamic Sharia law. Although the constitution specifies that in Khartoum non-Muslims shall not be subject to Sharia law, you should expect Sharia law to apply. ...

Homosexual practices and extra marital relations are illegal and subject to severe penalties....”

The Appellant relies in particular on the sentence which is emboldened.

12. The first point to make is that the Travel Advice is irrelevant if, as the Judge found, the Appellant did not engage in extra-marital sexual relations with [M]. Although Ms Ferguson suggested in the course of her oral submissions in reply that the Judge might also have erred in reaching her findings about the credibility of the Appellant, this was not something raised in the written pleadings and therefore not an argument which it was open to Ms Ferguson to make.
13. The Judge considered the core claim at [11] to [21] of the Decision. She made findings which were open to her on the evidence she heard that the claim was not credible due to inconsistencies between the accounts given by the Appellant at various times and the vagueness of some of his evidence.
14. Second, it is suggested in the grounds of appeal that the Judge might have reached a different conclusion as to the core claim if she had regard to the Travel Advice which is said to support what the Appellant said as recorded at [22] of the Decision.
15. The submission is, in effect, that the Travel Advice constitutes the sort of background evidence which could corroborate the Appellant’s case to such an extent that a claim found not to be credible on its own facts should be accepted simply because it is consistent with the position in the Appellant’s home country. Even if I accepted the force of that submission in the context of the claim which the Appellant makes (which

is founded on individual facts which are not accepted to be true), the Travel Advice cannot bear the weight which the Appellant seeks to place on it for several reasons.

16. First, as Mr Melvin points out in his skeleton argument, the Travel Advice, issued as it is by the Foreign Office in the UK, is simply advice to UK nationals travelling to Sudan. That is evident both from the title and the remaining content which refers to advice being given to travellers. As is made clear in the final part of the Travel Advice, it is designed to give general advice and not “to provide tailored advice for individual trips”. Still less does it have the force of expert evidence as to the legal position in Sudan for a national of that country in the individual circumstances of that individual’s asylum claim. It is not in the form of an expert report confirming the plausibility of the claim as made.
17. Second, even on a fair reading of the section of the Travel Advice on which the Appellant relies, it does not provide “expert evidence, country information or other corroborative evidence with regards to the laws of Sudan”. At best, it confirms that Sharia law applies, at least to Muslims, and that there are offences linked to homosexual relations and extra-marital relations which may incur severe penalties.
18. Third, and further in that regard, although the Travel Advice appears to confirm that “extra marital relations are illegal”, it does not specify the nature or extent of the offence. Although it says that such relations are “subject to severe penalties”, it does not say what those penalties are and for what behaviour. It does not specify the extent to which such offences are prosecuted. Ms Ferguson was constrained to accept as much.
19. In those circumstances, the Judge was entitled, even taking into account the Travel Advice, to conclude that there was no evidence beyond the Appellant’s own statement as to the punishment which his conduct would attract, nor whether it would apply to those who would, in the UK, be considered to be minors, nor what would be the actual offence, nor how the Appellant would know that he was wanted for an offence.
20. For those reasons, the Appellant has failed to establish that there is an error made by the Judge under the first ground.
21. The Appellant’s second ground challenges the Judge’s reasoning and conclusions at [26] of the Decision which reads as follows:

“The appellant’s representatives also claim that the appellant is at risk on return by virtue of the fact he would be identified as a failed asylum seeker. The appellant relies on the CPIN Sudan: return of unsuccessful asylum seekers v4.0 July 2018 and submits that if the appellant were a person of interest because of the relationship with [M], this fact together with return on an Emergency Travel Document would be a factor that would raise his profile and make him at risk of persecution, further or alternatively the fact that he

is black African will increase the likelihood of him being seen as a political opponent. It is necessary to decide whether, on the lower standard of proof applicable in asylum claims, it is reasonably likely that the appellant would face a real risk of persecution or serious harm. I find no evidential support for these assertions made by the appellant's legal counsel. **The appellant was, on his account 14 years old when he left Sudan on his own passport.** He has failed to establish that he is wanted by Sudanese authorities for any crimes or suspected offences, he has no political profile now or in the past and there is no other feature of his claim that puts him at risk of persecution or serious harm. If he were returned on an Emergency Travel Document, he may be questioned by immigration authorities; however, that heightened interest does not amount to persecution. He has family who can meet him at the airport, liaise with authorities and support him on return."

[my emphasis]

22. Before turning to the background evidence in relation to the Appellant's position as a failed asylum-seeker, I deal with the Appellant's second ground insofar as it concerns a mistake of fact said to have been made by the Judge. This submission concerns the sentence which I have emboldened in the citation above.
23. The first point to be made is that there is no actual error of fact made in that sentence. Mr Melvin drew my attention to the Appellant's screening interview at [RB/22-23] where the Appellant said that he lost his passport and identity document in transit to the UK. He also drew my attention to the Appellant's witness statement at [RB/59] where the Appellant described his journey from Sudan to the UK. He said he left Sudan via Libya in the company of an agent. It appears therefore that he did in fact leave Sudan in possession of his own passport which was lost during his journey.
24. The Appellant submits however that the inference to be drawn from what is said at [26] of the Decision is that the authorities were not interested in him because he left Sudan using his own passport. The way that this is put in the pleaded grounds is that "[t]he appellant did not have a valid exit visa and did not '[leave] Sudan on his own passport'" but also that "[t]he Judge infers [the Appellant] was not wanted in relation to his offence from the mistaken impression that he left on his own passport".
25. Dealing with the second point first, even if the inference is as the Appellant submits, there is no material error of law because the Judge had already found the core of the Appellant's claim to be not credible. The Judge did not accept that the Appellant would be wanted by the authorities for the reasons she had already set out when finding that the relationship which the Appellant claimed did not in fact occur.
26. Moreover, given the positioning of this sentence, it is difficult to draw the inference which the Appellant seeks to place on it. At [26] of the Decision, the Judge was dealing with the Appellant's case as to risk

on return due to the circumstances in which he left coupled with his individual position as a failed asylum-seeker and black African. So much is evident when one reads the submission recorded at the start of the paragraph.

27. I do not accept therefore that the Judge made a mistake of fact relevant to the Appellant's core claim.
28. I turn then to the first part of the submission in the context of the second ground and the relevance of this to the Appellant's case as to risk on return as a failed asylum-seeker, a person who had left Sudan illegally and a black African. It is difficult to draw any inference that the Judge was finding by that sentence that the Appellant left Sudan legally. She records at the start of the paragraph that the Appellant's case was that he would be returning on an Emergency Travel Document ("ETD") (because in any event he had lost his passport). That was the case which she was thereafter considering.
29. There is for those reasons no error as a matter of fact and certainly not one which has any bearing on the Appellant's case either in relation to his core claim or risk more generally.
30. I deal then with the part of the second ground which challenges the Judge's consideration of the Country Information Policy Note ("the CPIN") to which reference is made at [26] of the Decision.
31. The Appellant's pleaded ground in this regard relies on certain chapters of the CPIN as referred to in the Appellant's skeleton argument ("the Skeleton Argument"). The Skeleton Argument appears at [AB/1-3]. The CPIN is cited although not included in the bundle. It is though evident that the Judge had regard to it because she expressly referred to it.
32. The Skeleton Argument refers at [3] and [6] to paragraphs [4.1.3], [4.1.5], [4.1.6], [4.2.2] and [5.1.3] of the CPIN.
33. Paragraph [4.1.3] has little if any relevance to this case as it merely sets out what documents are required to obtain an exit visa. The Appellant's case is that he did not have an exit visa. Whatever inference may be drawn from the Judge's comment about the Appellant leaving on his own passport, she did not find that he had an exit visa. She proceeded expressly on the basis that the Appellant would be returned on an ETD.
34. Although [4.1.5] refers to background evidence which indicates that an individual may be prosecuted for leaving Sudan without an exit visa, the paragraph goes on to say that the organisation providing that report "did not find any information of actual cases of Sudanese voluntary or forced returnees who did not have an exit visa and were for this reason subjected to legal prosecution on their return".

35. Paragraph [4.1.6] does not assist the Appellant since it confirms that “CPIT [Country Policy Information Team] has been unable to find information in the sources consulted in this note that persons who have returned to Sudan, having left the country without an exit visa, have been prosecuted.”
36. Paragraph [4.2.2] sits within a section dealing expressly with “Entry” and begins at [4.2.1] with citation from a letter from the British Embassy dating from 2015 which sets out the procedures followed on return of a failed asylum-seeker. Paragraph [4.2.2] cites from an Australian Country Information Report dated April 2016 which deals with the requirement for exit visas and what is likely to happen at the airport to those who return without such a visa. It is there suggested that such an individual would have their immigration documents “reviewed” by the NISS (National Intelligence and Security Service) and would be likely to be questioned by NISS. However, even that report makes clear that an individual is only likely to be questioned in detail and possibly taken to NISS headquarters if of interest to the authorities because of actual or perceived opposition to those authorities.
37. Mr Melvin in his skeleton argument helpfully drew my attention to the Tribunal’s decision in the country guidance case of KAM (Nuba – return) Sudan CG [2020] UKUT 00269 (IAC) (“KAM”) and headnote (b) thereof which reads as follows:
- “A returning failed asylum-seeker (including of Nuba ethnicity) is not at real risk of persecution or serious ill-treatment at the airport simply on account of being a failed asylum-seeker”
38. Whilst I accept that the decision in KAM is only of tangential relevance, concerning as it does, those of Nuba ethnicity, it is instructive to look at the Tribunal’s consideration of the evidence which was before the Tribunal in relation to procedures at Khartoum airport set out at [186] to [229] of the decision. Much of what is there said relates expressly to those of Nuba ethnicity. However, it is evident from [221] of KAM that the Tribunal was considering the position generally for those returning to Sudan who would be identified as failed asylum-seekers either because they were returned on an ETD or a passport without a valid exit visa. As such, the two-stage process described at [223] of the decision applies equally to the Appellant’s situation. What is there said indicates that the first stage would be an immigration process arising from the documentation on which the individual was returned. As the Tribunal subsequently finds, whilst the identification of an individual as a failed asylum-seeker and a person who has left Sudan without an exit visa may prompt NISS questioning, it would not involve any further investigation unless the individual was known or suspected to be an opponent of the Sudanese regime (either pre- or post- the Al-Bashir era).
39. As Mr Melvin pointed out, the CPIN with which Judge Dyer was concerned was before the Tribunal in KAM and therefore what is said in

that decision and in the headnote for which the case is reported reflects that guidance.

40. Ms Ferguson submitted that the factors of the Appellant's exit without a visa, that he is a failed asylum-seeker and that he is a non-Arab black African considered individually or cumulatively would place the Appellant at risk. However, she was unable to point me to any background evidence which supported a submission that a black African Muslim would be at particular risk. The Judge dealt with and rejected at [25] of the Decision the submission that the Appellant's position is akin to that of a non-Arab Darfuri. As is pointed out there and elsewhere in the Decision and as Mr Melvin submitted, the Appellant is from Khartoum, describes himself as black African and not Darfuri, and his family remain in Sudan without threat.
41. The Judge dealt at [26] of the Decision with the submission made about the general risk factors said to apply. She found as she was entitled to do based on her other findings that the Appellant would not be of interest to the authorities on return, that he was not wanted for a crime as he claimed, that he has no political profile either presently or in the past and that there was no other feature that puts him at risk. The Judge found that if returned on an ETD, the Appellant might be questioned for that reason but found as she was entitled to do on the background evidence (and extant country guidance so far as relevant), that any "heightened interest" would not amount to persecution. That is consistent with the CPIN to which I have referred and the extant country guidance in KAM.
42. For those reasons, the Appellant has failed to identify any error of law by his second ground.

CONCLUSION

43. The Appellant has not established any error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal is dismissed.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge S Dyer does not contain an error of law. I therefore uphold the decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith

Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 April 2023