



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006685

First-tier Tribunal No: PA/52431/2021
IA/06240/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 28 June 2024**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**NO
(ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr I Hussain, counsel instructed by Lei Dat & Baig Solicitors Ltd
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 17 June 2024

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

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Alis in which her appeal was dismissed following a hearing which took place on 7 April 2022.

2. Permission to appeal was granted by First-tier Tribunal Judge Brewer on 17 August 2022.

Anonymity

3. An anonymity direction was made previously and is maintained because this appeal concerns a protection claim

Factual Background

4. The appellant is a national of Sudan now aged forty who came to the United Kingdom during 2019 and shortly thereafter married a person settled here. The appellant and her former husband divorced the following year, following which the appellant applied for asylum. That claim was based on her claimed membership of the Tunjur tribe, being a female victim of rape and violence, as well as her political opinion which had led to her arrest.
5. The appellant's protection claim was refused by way of a decision letter dated 7 May 2021. The respondent contended that the appellant was habitually resident in Saudi Arabia where her family lived, and which had issued her a residence permit which was valid until 3 May 2021. Her claim to be a member of the Tunjur or any other African tribe was rejected as was her claim relating to the political activity of her parents and that she was detained and ill-treated in Sudan.

The decision of the First-tier Tribunal

6. The First-tier Tribunal judge found that the appellant was habitually resident in Saudi Arabia and that she would be able to secure entry to the country. The judge rejected the appellant's claimed ethnicity and her account of being detained and assaulted in Sudan, on grounds of poor credibility.

The appeal to the Upper Tribunal

7. The grounds of appeal upon which permission was granted are two-fold:
8. Firstly, the judge erred in several respect regarding his assessment of the appellant's ability to reside in Saudi Arabia which included an allegation that the judge had relied on information which was not before the Tribunal.
9. Secondly, the judge erred in dealing with the appellant's ethnicity, in that he had not taken into consideration the arguments made on the appellant's behalf.
10. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

First, the judge, in reaching an adverse credibility finding on this appellant's tribe, arguably failed to provide adequate reasons for placing no weight and/or rejecting wholesale her correct responses given by the appellant in evidence *viz* her tribe.

Second, the judge, failed to make any finding on the appellant's evidence that the Union of the People of Darfur in UK and Ireland did speak to her relatives when assessing the veracity of her tribal connection.

Third, the judge, arguably erred in law in finding that appellant had habitual residence in Saudi Arabia because:

- i. Failure to have regard to material evidence on the cost of securing a temporary visa \$26,000;
- ii. Failure to have regard to the material evidence of the cost of securing a permanent visa \$213,000, in addition to the other requirements, which the appellant stated she could not meet;
- iii. Failure to have regard to her parent's unlawful residence in Saudi Arabia.

In respect of the Judge's findings on habitual residence, it is a Robinson obvious point that the judge failed to consider a material factor, i.e. whether this appellant had right of abode in Saudi Arabia (see *Nessa v Chief Adjudication Officer*) [1999] 1 WLR. This is an arguable error of law.

11. The respondent filed no Rule 24 response.

The error of law hearing

12. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as above. Both representatives made submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted by the appellant containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal. The parties agreed that were a material error of law to be detected, the appeal would have to be remitted to the First-tier Tribunal.

Discussion

13. Mr Bates conceded that the judge fell into error in relation to the first ground. The particular error he noted was that the judge appeared to rely on his own research into Saudi Arabian visas, in that there was no reference in the background material to visas being available for £500 as the judge found at [41] of the decision and reasons. It was common ground that this point was not put to the appellant or her representative. Despite that concession, Mr Bates argued that the error was not material given the judge's findings on the ethnicity issue.

14. In relation to the second ground, it is contended that the judge erred in concluding that the appellant was not a member of the Tunjur tribe notwithstanding the inconsistent evidence given by her witness. The essential point made is that there was a focus on the discrepant oral evidence regarding her relationship to the witness and that the judge placed no weight on evidence which went to support the appellant's case. Mr Hussain made particular reference to the appellant's ability to correctly respond to questions regarding the Tunjur tribe as well as a confirmatory letter from an organisation which had contacted people other than the witness to verify her claimed tribe.

15. In the light of the guidance given by the Court of Appeal at paragraph [77] of *KM* [2021] EWCA Civ 693, I recognise that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for his decision and that it should not be assumed too readily that the Judge misdirected himself owing to not every step in his/her reasoning being fully set out.

16. The appellant was interviewed at length about her asylum claim and asked around thirty questions regarding the Tunjur tribe alone. Those questions invited

detailed responses rather than being a checklist or test. The appellant's replies were indeed detailed and the respondent accepted that her answers were correct. For instance the appellant was able to expand on Tunjur sub-tribes, traditional Tunjur meals and the history of the tribe.

17. The judge placed no weight on this evidence because he did 'not discount' the respondent's submission that the appellant could have researched the Tunjur tribe for the interview [50]. The judge's reasoning here was insufficient.
18. Mr Bates argued that the judge did not solely rely on the inconsistencies regarding the witness and he mentioned that a further concern of the judge was that the occupations of the appellant's parents were atypical for members of the Tunjur tribe. That this was not a matter of any real importance in the decision as can be seen from [48] where the judge states that 'I do not find that this on its own would lead me to conclude that she was not a member of the aforementioned tribe, but it is a matter that maybe (sic) become more relevant after I have assessed all the issues.'
19. That leaves the letter from the Darfuri organisation to which the judge attached neutral weight. His consideration made no mention of the appellant's evidence as to the enquiries made by that organisation which included taking her family details, contacting her family by telephone in Sudan and Saudi Arabia prior to the letter being given.
20. Despite describing it as a 'side issue,' the focus of the judge's decision was whether the appellant was habitually resident in Saudi Arabia as can be seen from [35-43]. Thereafter the judge raised concerns only with the evidence of the witness before rejecting the core of the appellant's claim.
21. It is not without some reservation, that I conclude that the judge materially erred in failing to consider whether the appellant might be telling the truth about her ethnicity and events in Sudan notwithstanding that that there might have been a late and ultimately unsuccessful attempt to bolster her claim. In *Chiver* (IAT) 10758 it was found that the existence of difficulties with one part of the evidence did not mean that a judge was obliged to find that the core of an appellant's account could not stand. I am persuaded that the judge's approach showed an absence of anxious scrutiny given the potential consequences for the appellant.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Alis.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 June 2024