**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: AA/07953/2014**

**THE IMMIGRATION ACTS**

**Heard at: Manchester** **Decision Promulgated**
**On: 13th March 2015** **On 19th May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Mr Hamid Adam Sabeel**
**(no anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

Representation
For the Appellant: Mr Madubuike, AJO Solicitors
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant claims to be a national of Sudan born on the 1 January 1983. He appeals with permission[1] the decision of the First-tier Tribunal (Judge E.M.M Smith)[2] to dismiss his appeal against the Respondent's decisions to remove him from the United Kingdom pursuant to s10 of the Immigration

[1] Permission granted by First-tier Tribunal Judge Robertson on the 18th December 2014
[2] Determination promulgated on the 24th November 2014

and Asylum Act 1999[3]. That decision had followed from rejection of the Appellant's claim to international protection.

2. The matter in issue before the First-tier Tribunal was whether the Appellant is a national of Sudan. It was accepted that he is a member of the Zaghawa tribe, but not that this necessarily placed as being from Darfur. It was common ground that if he could show it to be reasonably likely that he was Sudanese, his appeal would be allowed. In the refusal letter of 19th September 2014 the Respondent gave numerous reasons for rejecting the Appellant's assertions about his nationality. In summary it was considered that much of the Appellant's knowledge about Sudan was inaccurate or incorrect.

3. On the morning of the hearing before the First-tier Tribunal the Appellant's representative informed the Tribunal that some important evidence had come to light late in the day. This evidence consisted of:

    (a) The Appellant's High School certificate issued in Sudan;

    (b) The Sudanese identity card of his brother;

    (c) The Sudanese identity card of his paternal cousin.

    These documents had been emailed to the Appellant directly and were available on his mobile telephone. Copies had been printed by the solicitors and had been faxed to court. Mr Madubuike requested that the case be adjourned, or at least stood down to later in the day to enable the documents to be translated.

4. The Tribunal declined to adjourn or set the matter back. The reasons for doing so are set out at paragraph 14 of the determination:

    > "It transpired that in fact the documents had been sent by telephone by the appellant's brother who lives in Sudan. Whilst I did not inspect the telephone the appellant said the documents actually relate to his brother. They were neither the originals nor copies and had only been captured by telephone. I was satisfied that even if translated they were of no probative value. The respondent would be unable to assess the integrity of each document and they had nothing to do with supporting the appellant's case".

    The Tribunal proceeded to hear, and dismiss, the appeal. At paragraph 21 of the determination the Tribunal records the standard of proof as being the balance of probabilities; at paragraph 41 it is found that the Appellant has not shown himself to be Sudanese "even to the low standard". Paragraphs 24-27 deal with the Appellant's failure to claim asylum in Libya, Italy or France en route to the UK. In paragraphs 28-32 the Tribunal identifies a

[3] Dated 25th September 2014

number of discrepancies in the evidence which lead to a rejection of the evidence overall as "incredible". At paragraph 32 the evidence of a witness is rejected as being "insufficient" to assist the appellant. This witness was Mr Yagoob who is a Darfuri Zaghawa: having met with and spoken to the Appellant Mr Yagoob was satisfied that they were from the same tribe. The witness had asserted that he had established through conversation that he knows members of the Appellant's family; this evidence was dismissed as the witness had agreed that this was based on the Appellant's "self reporting".

5. The grounds of appeal are, in summary, that the First-tier Tribunal erred in its approach in the following respects:

   i) In refusing to adjourn the Tribunal failed to consider the overriding objective set out in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 that the appeal be disposed of fairly and justly. The late material could have been translated relatively quickly, went to the heart of the matter in the appeal and contrary to the assertions at paragraph 4 was of probative value;

   ii) Unfairly and irrationally rejecting the evidence of the witness. The principle reason given for declining to place weight on the opinion of Mr Yagoob was that he had not taken an opportunity to speak to the Appellant's father by telephone. Whilst the Appellant agrees that such a conversation might have bolstered Mr Yagoob's conclusions, the failure to have it could not logically lead to rejection of the matters asserted. It is further submitted that the HOPO had not challenged the evidence of this witness;

   iii) Applying the wrong standard of proof;

   iv) Failing to address the central issue of whether the Appellant is in fact from Sudan. It is submitted that the determination fails to take into account material evidence such as the US State Department Report and the fact that the Appellant conducted his interview in Arabic.

6. For the Respondent Ms Johnstone defended the decision with her customary vigour. She pointed out that the determination contains numerous reasons for rejecting the Appellant's account of persecution in Sudan and highlights several gaps in his knowledge about his claimed home area. The late evidence would have made no difference and the Tribunal was correct to say that it was of no probative value. Looking at it on the phone it was not legible. The standard of proof is set out wrongly at paragraph 21, but it is apparent from paragraph 41 that the standard actually applied in assessing the evidence was the correct one. As for the evidence of the witness Mr

Yagoob he had confirmed that he had not known the Appellant in Sudan and his evidence was based on what the Appellant had told him in this country.

**Error of Law**

7. There is no merit in the suggestion that the First-tier Tribunal failed to engage with the question of whether the Appellant was in fact Sudanese. It was open to the Tribunal to approach the question of nationality by looking at the credibility of the account overall, and it is apparent from paragraphs 29-31 that the Tribunal in addition directed itself to the specific question of nationality.

8. I am further satisfied that the Tribunal did direct itself to the correct standard of proof. Paragraph 21 contains an unfortunate reference to the "balance of probabilities' but it is clear from 41 that the lower *Sivakumaran* standard was applied to the evidence overall.

9. I am satisfied however that the Tribunal did err in refusing to adjourn. The refusal gave rise to a material unfairness. There was arguably little probative value in the identity cards of two Sudanese men whom the Appellant identified as his brother and cousin. As Ms Johnstone pointed out, there was no way of knowing whether they were actually related to him at all. The matter of the Appellant's own high school certificate is however different. This document was capable of placing him in Sudan. It might have been said to be incompatible with his earlier evidence that he has had no education (see paragraph 28(a) of the determination), but I find that it was nevertheless evidence which merited attention. It is trite asylum law that the task of the decision-maker is to evaluate all of the evidence before it in the round. That evidence, albeit produced late, was in fact available to the Tribunal in written form: it is in the court file, having been faxed by the solicitor. It is a short document and it would not have taken long to translate: indeed Mr Madubuike offered to endeavour to have it done the same day. The objective of a speedy disposal should not be elevated at the expense of justice. I find the reasons given for proceeding without that document being admitted into the evidence are not sustainable. The document was capable of attracting weight – not least if it could be established that it had emanated from the Appellant's brother in Sudan. It was an error to proceed without permitting the Appellant a chance to rely upon it.

10. I am further satisfied that the Tribunal erred in its approach to the evidence of the witness Mr Abdelazeez Abdallah Yagoob, delegated to appear at the hearing by the Zaghawa Community in Greater Manchester. He and the Chair of that organisation have both been recognised as refugees from Darfur. Paragraph 3 of his statement explains the background to his attendance at court:

> "We take a number of measures to decide whether an applicant is from the Zaghawa ethnicity or not. For example, we call the applicant for

> interview in our office and we ask questions about his background and his family and we speak to him in our mother tongue of Zaghawa. This is usually done by three members and elders of the community. It is only if we are fully satisfied that he belonged to the Zaghawa community from Sudan that we write a support letter and we send someone to court from our community to be a witness in support of his appeal".

Paragraph 5 sets out the particular evidence relating to the Appellant:

> "Following a detailed chatting with Mr Sabeel, I came to know his family from Sudan. Therefore, I can claim I know his family and relatives and that I can confirm he is from the Zaghawa ethnicity and from the Wogie sub-tribe. I am from the same sub-tribe. We have a distinctive dialect within our sub-tribe and I can confirm he speaks the same dialect as me"

11. It was this latter evidence that was dismissed on the basis that it arose from the Appellant's "self reporting". With respect, I am not clear what this means. If it means that the Appellant named some people and Mr Yagoob was able to identify them as individuals known personally to him, I fail to see how that diminishes the weight to be attached to the evidence. On the other hand, if Mr Yagoob had asked the Appellant if he knew a number of named individuals and the Appellant simply agreed that he did, this would not be of much use at all. The determination does not however find that this is what happened: indeed if it did this would be contrary to the evidence offered by the Zaghawa Community about how they approach these interviews. Nor was there any regard had to the evidence about the specific dialect spoken by the Appellant and identified by Mr Yagoob as being spoken by his Darfuri sub-tribe. I find that the determination did not give due weight or attention to the evidence of Mr Yagoob and the Zaghawa Community of Greater Manchester. This was evidence at the heart of the Appellant's case and as such it merited greater attention than it got.

12. The Respondent's case before me was in essence that the Appellant has been such a poor witness that any of error identified in this determination would not be material. It may well be the case that in the final analysis the Appellant is not able to discharge the burden of proof in showing himself to be Sudanese. The fact remains however that he is entitled to have the evidence he relies upon – the high school certificate and that of Mr Yagoob – properly considered. That is particularly so where the matter in issue is a narrow one. I remind myself that it is of course the case that the Appellant's account of persecution may all be untrue, but his claim to be Sudanese genuine.

13. I am satisfied that the errors identified are such that the decision must be set aside.

14. The parties agreed that if the decision were to be set aside, it should be remitted to the First-tier Tribunal. This is an asylum appeal which requires full re-making; Mr Madubuike indicated that this would be with at least three witnesses giving evidence through an interpreter. It is likely to take at least four hours. The Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal provide at paragraph 7 (b) that an appeal may be remitted to the First-tier Tribunal where "the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal". Having regard to that guidance I agree that the matter should be remitted.

**Decisions**

15. The determination of the First-tier Tribunal contains errors of law such that it is set aside.

16. The matter is to be remitted to the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
30th April 2015