IAC-AH-LEM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00949/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice Belfast	**Decision & Reasons Promulgated**
On 30 November 2015	**On 05 January 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

AD
(ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S McQuitty, Counsel
For the Respondent: Mr M Diwnyez, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sudan born on 1 November 1989. He arrived in the UK on 12 or 13 August 2014 and claimed asylum on or about 22 August 2014. The respondent's decision on 5 January 2015 refused his claim for asylum and made a decision to remove him under Section 10 of the Immigration and Asylum Act 1999. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge S. T. Fox on 30 April 2015 whereby the appeal was dismissed. Permission to appeal

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against the First-tier Judge's decision having been granted, the appeal came before me.

2. Mr McQuitty on behalf of the appellant relied on the grounds of appeal which were not amplified in detail in relation to every ground because of the way the appeal proceeded. I asked Mr McQuitty to deal with certain aspects of the grounds. Mr Diwnyez in reply, whilst not conceding the appeal, did accept that there was merit in what was said in the grounds about the judge's failure to have regard to relevant country guidance.

3. Judge Fox heard evidence from the appellant and recorded the submissions of the parties. He referred at [10] of the determination to country guidance in *AA (Non-Arab Darfuris – location) Sudan CG* [2009] UKAIT 56. What the judge did not do however is to have regard to more recent country guidance in the decision of *MM (Darfuris) Sudan CG* [2015] UKUT 00010 (IAC). That decision was promulgated on 5 January 2015 and the appeal came before First-tier Judge Fox on 30 April 2015. Accordingly it is a decision that governed the appeal before the First-tier Tribunal.

4. The grounds of appeal make various complaints about the decision of the First-tier Judge. I summarise the grounds with some comment of my own as I summarise them.

5. It said that the judge did not fully grasp the issues in the case and how the respective parties were advancing them. An example of that is given in [2] of the grounds whereby with reference to [8] of the judge's determination he said that an alternative argument was made by the Home Office to the effect that there was in place a system which offered a sufficiency of protection. In fact that was no part of the respondent's case and it does not seem to me that it could have been. I cannot not find any reference in the refusal letter to that being an alternative basis on which the respondent advanced the case.

6. The country guidance decisions are significant because the appellant claims that he is from the Berti tribe and is therefore a non-Arab Darfuri. It is argued that in the light of *AA* to which I have referred that fact would in any event make him potentially at risk. The matter in some ways is more nuanced given the decision in *MM*. The headnote states that in the country guidance case of *AA*, where it is stated that if a claimant from Sudan is a non-Arab Darfuri, he must succeed in an international protection claim "Darfuri" is to be understood as an ethnic term relating to origins not as a geographical term. Accordingly, it covers even Darfuris who are not born in Darfur. It is said on behalf of the appellant that this is the position that he is in.

7. Moving on in the grounds, although not necessarily in terms of order of importance, it is said that the judge's assessment in relation to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is flawed in the sense that the judge took s.8 as his starting point. So far as that is concerned, it does seem to me that there are some valid points to

be made in s.8 terms, but it could be said that there is merit in the complaint that the judge appears to have taken this issue as his starting point. Having said that, if that had been the only ground advanced I would not have found that on its own it would have been a sufficient basis for finding an error of law such as to require the decision to be set aside. It is not necessary for me to identify with particularity what the valid s.8 points are; they are obvious from the facts, for example that the appellant gave false names.

8. The appellant claims that he was arrested on two occasions, firstly on 20 September 2013 and secondly on 18 May 2014. It said that the judge's conclusions in relation to those arrests are inconsistent. At [17] the judge seemed to indicate that he accepted that the appellant was detained on one occasion. The argument on behalf of the appellant is that that detention or arrest alone would put him at risk on return.

9. By way of background it is to be noted that the appellant's claim is that he was a member of an organisation while at university in Khartoum known as, amongst other things, the Organisation for the People of West Sudan. In that context he helped to support students, would collect money, attend meetings and hand out leaflets. It is in respect of those activities that he says he was arrested on the first occasion, and then latterly, and it is for that reason that he says he would be at risk.

10. Further complaint is made in relation to the judge's assessment of the appellant's credibility in terms of the appellant apparently having escaped from hospital after his second arrest, which it is also argued that the judge in one sense seems to accept.

11. More importantly it seems to me, is the issue in relation to expert evidence. There was a report from Mr Peter Verney which commented on all significant aspects of the appellant's claim including his ethnicity, and in respect of language. Criticisms are made in the decision letter of the appellant's knowledge of the Berti tribe or ethnic group from which he is said to come, and Mr Verney deals with those issues in some detail and makes an assessment of the appellant's claim in that respect.

12. Although the First-tier judge was clearly cognisant of the report of Mr Peter Verney, referring to the fact of the expert evidence at [11] of the determination, in my judgement there is insufficient engagement by the judge with the issues dealt with by Mr Verney in his expert report.

13. Thus, at [33] the judge referred to the expert report stating that it lends some support for the appellant's "story". He said however, that he had reservations about what is in the report. Firstly, he concluded that the information given to Mr Verney predominantly originates from the appellant himself and stated that many aspects of the evidence given by the appellant to Mr Verney were self-serving. However, in a sense all evidence given by or on behalf of an appellant is self-serving, which is why

the evidence is given. Secondly, at [34] he observed that with regard to the report:

> "... it does little to persuade me that the anomalies, inconsistencies and vagueness referred to in the paragraphs above, are exploitable (sic) and properly dealt with in subsequent answers provided by the Appellant. In my opinion they are not."

14. Whilst there the judge said that he did not find Mr Verney's report dealt with what he described as anomalies, inconsistencies and vagueness, the judge did not there explain what inconsistencies, anomalies and vagueness are not dealt with in Mr Verney's report. Indeed, there is no reference in any detail at all to the substantial report of Mr Verney. Of course, expert evidence does not carry the day in any appeal and its assessment is a matter for the judge seized of the appeal, as Mr Diwnyez rightly pointed out. However, a judge is required to engage with expert evidence in order to make a reasoned assessment of the credibility of an appellant's claim, where the expert evidence is relevant to credibility.

15. As I have already indicated, the judge also failed to have regard to relevant country guidance which potentially has a direct bearing on the issues in this appeal.

16. I am satisfied that the First-tier Judge erred in law in his assessment of the appellant's appeal in terms of the lack of engagement with the expert evidence, the lack of engagement with the up-to-date country guidance and taking into account the other matters advanced on behalf of the appellant in the grounds which otherwise would not on their own terms have been sufficient to find an error of law requiring the decision to be set aside. Cumulatively I am satisfied that they are.

17. Accordingly, I set aside the decision of the First-tier Tribunal. I consider that having regard to the Practice Statement at paragraph 7.2 it is appropriate for the matter to be remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge S. T. Fox. No findings of fact are preserved.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside. The appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a differently constituted tribunal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek 23/12/15