



IAC-BH-JLS-V1

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

Appeal Number: AA/01158/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 1st February 2016**

**Decision Promulgated
On 13th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**MR ANWER ABDULKRIM YOUSIF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lane, of Counsel instructed by Genesis Law Associates Ltd
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a renewed application for leave to appeal made to the Upper Tribunal, permission was granted to the appellant to appeal against the decision of Judge of the First-tier Tribunal E. M. M. Smith in which he dismissed the appeal on all grounds against the

decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant an adult citizen of Sudan.

2. The grounds of application to the Upper Tribunal, which adopt the grounds to the First-tier Tribunal, argue that the Judge was wrong to reach conclusions undermining the expert opinion of Mr Peter Verney concerning the ability of the appellant to speak the Zaghawa or Beri dialect. Further it was contended that the Judge gave inadequate reasons for rejecting the expert evidence in relation to the appellant's knowledge of the Zaghawa Tribe. Additionally, the Judge failed to take into consideration that, in addition to the expert at the interview, a member of the Zaghawa Community Association was present so any deficiencies in the appellant's ability to speak Zaghawa would have easily been identified.
3. Permission was granted by the Upper Tribunal on the basis that it was arguable that the expert's language ability was not a material consideration in the light of his qualifications and expertise generally. A decision to reject that evidence was inadequately reasoned.

The hearing and submissions

4. At the hearing before me Mr Lane relied upon his skeleton argument which re-emphasises the points already made in the grounds of application. Additionally, it is indicated that the respondent accepted before the First-tier Tribunal that, if the appellant had proved that he is a Zaghawi, he would, without more, have been entitled to international protection by reference to *MM (Darfuris) Sudan CG [2015] UKUT 00010* although the previous country guidance case of *AA (Non-Arab Darfuris-Relocation) Sudan CG [2009] UK AIT* was also relevant.
5. Mr Lane also emphasised that permission had been granted on the basis that Mr Verney's language ability was not a material consideration bearing in mind his qualifications and expertise generally.
6. Mr Lane also referred to representative's application to admit evidence that was not before the First-tier Tribunal applying the provisions of Rule 15 (2A) of the Procedure Rules for the Upper Tribunal. This evidence was in the form of a supplemental report of Mr Verney of 22nd May 2015, a report by Professor Wendy James of the same date and a further letter from the ZCA (Zaghawa Community Association) of 30 June 2015. Whilst acknowledging that all of this evidence post dated the decision Mr Lane submitted that it was to show that the First-tier Tribunal made an error of law in dealing with the assumptions and findings of the expert and that the wrong methodology was applied by the Judge. It did not merely "add to and answer" the findings of fact made by the Judge.
7. Other comments in the skeleton contend that the Judge failed to consider the detail of Mr Verney's credentials, failed to appreciate that parts of the interview of the appellant had been conducted in Beri (as indicated in Mr Verney's report at paragraph 6) and that there was a member of the ZCA present during the interview. Further, it is argued that the Judge did not take into consideration wider factors relating to the Appellant's ethnicity as commented on in significant areas of the expert's report and about which the appellant had been asked numerous questions in interview.

8. Mr McVeety reminded me of the response under Rule 24 although he conceded that this was written without a copy of the grounds. He considered that the grounds amounted to simply a disagreement with the Judge's reasons and conclusions. Put simply, Mr Verney was not an expert on language and it was outside his remit to comment upon the appellant's ability to speak Beri. The expert could only recognise odd words. Certainly the respondent would be unable to rely upon such expertise rejecting a claim on the basis of language. Mr McVeety also criticised the expert report on the basis that it was wrong to comment on the credibility of the appellant's claims when that was the function of the Court.
9. He also contended that the Judge did not need to consider every point raised in the report but gave other reasons for rejecting the credibility of the appellant's claims.
10. In conclusion, Mr Lane pointed out that the appellant had not been given the opportunity to speak his own language at the hearing before the First-tier Tribunal. This was because an Arabic, North African interpreter had been provided.

Conclusions

11. In relation to the application to submit further evidence under Rule 15 (2A) submitted to the Upper Tribunal on 19 October 2015, I have to bear in mind that under subparagraph (a) (ii) of the Rule an explanation should be given about why such evidence was not submitted to the First-tier Tribunal.
12. In the application it is stated that the evidence proves the appellant's claim to be from the Zaghawa Tribe and is also to "act as a response to concerns raised by the First-tier Tribunal". I do not find that those reasons adequately explain why further evidence was not produced at the First-tier Tribunal hearing to expand upon or strengthen the language conclusions set out in Mr Verney's report particularly from paragraphs 46 to 69, inclusive, and the conclusions section. This is a particularly relevant omission when Mr Verney properly makes it clear that he is not a speaker of the relevant dialect. As the First-tier Judge comments in paragraph 28 of the decision, there is nothing in the report to indicate that Mr Verney speaks the Beri (Zaghawan) language he ascribes to the appellant. Indeed, the appellant's representative at the hearing, Ms Radman, accepted that Mr Verney's expert opinion on the language was an issue even if he was otherwise highly regarded as a country expert. However, Ms Radman did not seek to request an adjournment for further evidence nor was the Judge obliged to give one of the absence of such a request. Additionally there was no request to change the Arabic interpreter provided for the hearing. The Judge does not simply reject Mr Verney's opinion because he is not a Beri speaker but fully analyses the report.
13. For the reasons given above I indicated, at the hearing, that I was not prepared to allow the additional evidence to be produced under Rule 15 (2A). In summary that was because there was no good reason for the additional explanations not being produced at the hearing or an application being made to adjourn the hearing for further evidence to cover the language expertise point.
14. Mr Lane also contends that the Judge's consideration of issues relating to the appellant's claimed Zaghawan ethnicity were not adequately considered by the Judge. In particular, it is argued, with reference to several passages in Mr Verney's report, that the Judge failed to consider other evidence supportive of the appellant's

ethnicity claim. However, the decision makes it clear that the Judge did not ignore such additional evidence. The Judge gives adequate reasons for rejecting the claim set out in the Zaghawa Community Association letter, particularly since its author had not shown how he was able to say that the appellant was from the Zaghawa Tribe. It is also evident that the Judge took into consideration the whole of Mr Verney's report before reaching his conclusions about its value in supporting the appellant's claims (paragraph 33). It is also relevant to note that (paragraph 35) the Judge identified six specific cases of inconsistency in the appellant's evidence which enabled him to find that the appellant's account was untruthful and that the appellant did not have a well founded fear of the Janjweed or being a member of the Zaghawa Tribe. The Judge also, properly, refers to the Upper Tribunal decision in *Budhathoki (Reasons for Decisions) [2014] UKUT 00341 (IAC)* where it was stated that it is generally unnecessary and unhelpful for a First-tier Tribunal judgement to rehearse every detail or issue in a case. It is, however, necessary for Judges to identify and resolve conflicts in evidence and explain in clear and brief terms reasons that the parties understand why they have won or lost. The First-tier Judge clearly did this.

15. Notwithstanding the eminence of Mr Verney as an expert, the Judge was not obliged to accept his expert opinion on the appellant's ability to speak Zaghawan, particularly when it was accepted that the expert was not able to communicate in that language. The Judge was entitled to rely upon other inconsistencies in the appellant's evidence which enabled him to reject the appellant's claims to be at real risk of serious harm on return. It is suggested that the appellant should have been given the opportunity to speak in his native tongue at the hearing. However, it is clear from paragraph 14 of the decision, that the appellant had no difficulty in communicating with the court in Arabic and his representative, when aware of the language issue, did not request any adjournment in order that the appellant could show his ability to speak Zaghawan.

Decision

16. The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

Anonymity was not requested nor do I consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt