



IAC-PE-SW-V1

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

Appeal Number: AA/05039/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 19<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 27<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**MR FADOL MOHAMED KABO  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Mensah, Counsel, instructed by AJO Solicitors  
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, Mr Fadol Mohamed Kabo, date of birth 19<sup>th</sup> February 1979 is a citizen of Sudan.
2. I have considered whether or not it is appropriate or necessary to make an anonymity direction in these proceedings. Having considered all the circumstances I do not consider it necessary to do so.

3. By a decision made on 8<sup>th</sup> July 2014 the Respondent made a decision to remove the Appellant from the United Kingdom as an illegal entrant after refusing the Appellant's claim to asylum, humanitarian protection or relief on the grounds of Articles 2 and 3 of the ECHR.
4. The Appellant appealed against that decision and the appeal was originally heard in the First-tier Tribunal in August 2014. However that decision was set aside by a decision of the Upper Tribunal on 3<sup>rd</sup> December 2014 and it was directed that there be a full rehearing of the appeal. It was directed that the hearing take place in the Upper Tribunal. Thus the appeal was listed before me on 19<sup>th</sup> January 2016 as a full rehearing.

## **The Law**

### Law

#### **Asylum & Humanitarian Protection**

5. Asylum- Paragraph 334 of the Immigration Rules HC395 states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on an appellant to satisfy me that she/he falls within the definition of a refugee in Regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (which I shall refer to as the Qualification Regulations) as read with Article 1(A) of the Refugee Convention.
6. In essence, an appellant will have to show that there are substantial grounds for believing that the appellant is outside his country of nationality or, if applicable, where an appellant does not have a nationality his country of former habitual residence, by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail himself of the protection of that country.
7. Humanitarian Protection-Paragraph 339C of the Immigration Rules HC395 states that an appellant who does not qualify as a refugee will be granted humanitarian protection if the provisions of that paragraph apply. The burden of proof rests on an appellant to satisfy me that he is entitled to humanitarian protection under paragraph 339 of the Immigration Rules. In essence, an appellant will have to show that there are substantial grounds for believing that, if returned, the appellant would face a real risk of suffering serious harm and he is unable or, owing to such risk, unwilling to avail himself of the protection of the country of return.
8. The appellant also claims that the decision breaches his protected human rights, under Articles 2 and 3 of the ECHR, in that if he were to be returned to his home country of Sudan he would be at risk of inhuman or degrading treatment or punishment contrary to Articles 2 and 3 of the ECHR to the lower standard.).

## **Factual Basis**

9. The Appellant claims to have been born on 19<sup>th</sup> February 1978 in Wadi Salih, Darfur in Sudan. There appears to be a number of alternative dates of birth if one looks at the screening interview B question 1.5 and the asylum interview question 2. The dates of birth vary from 19<sup>th</sup> February 1978 to 19<sup>th</sup> February 1979 to 1<sup>st</sup> January 1980.
10. The Appellant claims that he is of the Tunjur ethnicity. He also claims that both his parents were of the Tunjur.
11. When the Appellant was about 10 years old the family moved to live in Mayue in Khartoum and then moved to live in Salha in Omdurman in or about 2002. The Appellant attended school to the age of 7 then worked in a market and ultimately he with another owned a shop and ran the shop for eleven years. [ See asylum interview questions 29 to 43]. Alternatively the Appellant was unemployed [see screening interview B question 1.9].
12. It has to be noted that there are two screening interviews one set out at part B of the Home Office bundle and one set out at part C. The reason for that is that the Appellant has entered the United Kingdom on two occasions and has been interviewed twice. The circumstances of that will become apparent.
13. Again there are variations between the two versions of the screening interview. The first screening interview is in 2010 the second in 2014. In the 2010 screening interview the Appellant stated he had a passport and a national identity card in Sudan but in the 2014 screening interview he stated he never had a passport or national identity card.
14. The Appellant and a colleague, Mr Bashir, ran a shop in Omdurman. The Appellant claims firstly that he was detained by the authorities on the 13<sup>th</sup> May 2008. He alleges that this was after members of the Justice and Equality Movement (JEM) carried out a raid on Omdurman. The alleged raid took place on 10<sup>th</sup> May 2008. After the raid the security service began to arrest those that were not of Arab origin in the area. The Appellant claims that he was at his shop when the security services came and arrested him. The Appellant says that the shop was attached to his home address.
15. He says that he was arrested on 13<sup>th</sup> May and was detained for a total of 21 days during which time he was beaten and subjected to electric shocks. He claims to have been released on 3<sup>rd</sup> June. A condition of his release was that he should provide information about his friend and co-owner of the shop, Mr Bashir, who was suspected of working with JEM.
16. The Appellant claims that he was due to report on 14<sup>th</sup> June 2008 but that he did not do so and that he was again arrested. It is unclear whether or not he had actually managed to go to report but certainly the authorities came and arrested him again. On this occasion he was detained for a period of seven days.

17. However the Appellant claims that he became very ill with vomiting, diarrhoea and malaria. He could not eat and was near to collapse. He says that he next found himself in a hospital in Omdurman. He claims that he was taken to the hospital. Having been taken to the hospital the Appellant claims that he then escaped from the hospital. He went to Mayue. At that point his friend organised for him to leave the country. He caught a bus and travelled by bus to Egypt.
18. He remained in Egypt for a period of two months before travelling to Turkey. He stayed in Turkey for approximately six months working occasionally cleaning in restaurants. He states that he was trying to travel at that stage to Greece. It appears that the Appellant then went to Greece and was in Greece for some period of time. He sought to claim asylum in Greece but his case was not processed. Ultimately the Appellant left Greece travelling through Italy and France and came to the United Kingdom on 24<sup>th</sup> June 2010. He entered the United Kingdom concealed in a bus. He was interviewed.
19. However his claim at that stage was dealt with under the Dublin Convention and the Appellant was returned to Greece on 9<sup>th</sup> September 2010. However the Appellant thereafter was not granted leave in Greece. He again claims to have travelled to the United Kingdom via Italy and France again entering the United Kingdom concealed in a vehicle on 20<sup>th</sup> April 2014.
20. He was arrested by Surrey Police on 29<sup>th</sup> April 2014 on suspicion of being an illegal entrant. At that stage the Appellant sought to claim asylum. The decision to refuse him asylum or other relief was thereafter made.
21. As stated the Appellant has claimed to be a member of the Tunjur Clan from Darfur. The Appellant in interview was asked a large number of questions about the Tunjur. At question 148 in interview he named the places and areas within Darfur where the Tunjur lived. The Appellant was then asked about their traditional culture and customs and he gave a number of answers relating to the musical instruments that they would play (question 149), the form of wedding ceremony that would take place in such tribal groups, he named the leaders of some of the tribal groups and the structure of the tribal groupings. He named various sultans that were claimed to be members of the Tunjur. The Appellant accepted that he could not speak any other languages other than Arabic.
22. Within the refusal letter it was accepted that the Appellant was a Sudanese national. The refusal letter notes that the information given was consistent with external information but other parts of the information was not verifiable. Nowhere does it suggest that the information given by the Appellant was any way inaccurate or contrary to known practices of the tribal grouping of the Tunjur. The basis of the refusal of the Appellant's claim to be a member of the Tunjur according to the refusal letter is the fact that such information could easily have been obtained from other sources.

23. During one of his detentions the Appellant claimed that he had been beaten with whips or electric cords. He claimed to have a specific injury on his leg and a significant scar. There was no medical evidence to confirm the causation of the scar but it was accepted that the Appellant did have a scar.
24. The Appellant thus claims that he is at risk on return to Sudan by reason of two factors. He claims that he is a member of a tribal grouping from Darfur specifically the Tunjur and that by reason of that he would be at risk if returned to Sudan. Further he claimed that the authorities have already taken an interest in him and an interest in his business partner, Mr Bashir, because Bashir was suspected of being involved with JEM.
25. With regard to the Tunjur it has to be noted that parts of the Sudanese OGN have been submitted. At paragraph 3.10.3 there is reference to non-Arabic tribal groupings from Darfur or African tribal groupings in Sudan from Darfur. Included in that list is the Tunjur.
26. At 3.10.4 the OGN also makes the following comment with regard to the distinctions and fighting between Arab and African tribal groups:-
- “They speak the same language (Arabic) and embrace the same religion (Muslim). In addition, also due to the high measure of inter-marriage, they can hardly be distinguished in their outward physical appearance from members of tribes that allegedly attacked them. Furthermore, inter-marriage and coexistence in both social and economic terms, have over the years tended to blur the distinction between the groups. Apparently, the sedentary and nomadic character of the groups constitutes one of the main distinctions between them. It is also notable that members of the African tribes speak their own dialect in addition to Arabic, while members of Arab tribes only speak Arabic.
- The various tribes that have been the object of attacks and killings (chiefly the Fur, Massalit and Zaghewa tribes) do not appear to make up ethnic groups distinct from the ethnic groups to which the persons or militias that attack them belong.
- It is also notable that members of the African tribes speak their own dialect in addition to Arabic, while members of the Arab tribes only speak Arabic.”
27. In that regard I draw attention to the background information contained in the case of **MM (Darfuris) Sudan CG [2015] UKUT 10**. In that respect I point out the evidence of Mr Verney to the Upper Tribunal in that case in which at paragraph 7 the following is noted:-
- “(7) (i) The Sudanese authorities would treat the Appellant as a non-Arab Darfuri. What would matter to them was that he was a member of a non-Arab tribe who originated from Darfur. It would make no difference to them that his father had moved away from Darfur and that he himself had neither been born nor ever lived in Darfur.”

28. It appears in the Upper Tribunal that Mr Verney's expert opinion to that end was accepted.
29. I have before me a report by Mr Verney. There are a number of matters of significance within that. First and foremost it indicates that those of Darfuri origin are put in a position that they are forced to prove their loyalty to the regime or they are suspected of being rebel sympathisers. It is noted that many of the ethnic African tribes have lost their indigenous language and have adopted Arabic. Consistent with the Appellant's account of the incidents after 10<sup>th</sup> May 2008 suspected Darfuris in Omdurman were arrested in house to house searches. That seems to have been occurring whether or not there was any basis for suspicion of the individual. Consistent again with what the Appellant says at 125 Mr Verney points out the conduct of the security forces in arresting and detaining individuals and then releasing them forcing them to be spies on colleagues. Arrest and detention for short periods of time is commonplace.
30. Mr Verney in reporting on the Appellant's claim conducted detailed enquiries with the Appellant. Criticism was made of the fact that on occasions in the transcript of the interview with Mr Verney, Mr Verney seems to have been suggesting the answers rather than eliciting information from the Appellant. However even taking that into account it appears that the points at which Mr Verney did promote answers were not of significance with regard to establishing the Appellant's knowledge with regard to the Tunjur Clan. The Appellant was asked with regard to places that were near to his place of birth Wadi Salih. The Appellant correctly gave a number of places which Mr Verney could confirm were correct. The Appellant also correctly named the clans of the Tunjur. He was asked his house clan and gave the response Krio and thereafter gave a number of other clans of the Tunjur. The Appellant was able to name the areas in which the Tunjur clan lived.
31. In his conclusions Mr Verney having set out that he is careful to take account that individuals may be reciting learned information rather than information from personal experience he does however say the following:-
  - "154. On the basis of my interview, taking his evidence in the round, I think he has a fair claim to Tunjur ethnic identity."
  155. If returned to Sudan Mr Kabo will be regarded as a sympathiser with the band opposition and accused of rebel membership by reason of his ethnic identity and the fact of his having claimed asylum abroad.
  156. This will put him at risk of persecution and physical harm."

## **Findings**

32. It was accepted that if the Appellant was of the Tunjur Ethnic Clan then he would be at risk if returned to Sudan. In line with the current country guidance cases those that are perceived to be "not of Arabic tribal origin" but of African tribal origin and to emanate from Darfur are at risk if returned to Sudan.

33. First and foremost within the interview itself the Appellant has given details which are consistent with the customs and practice of the Tunjur. He has described not only wedding ceremonies but instruments and customs with regard to dancing. Further within interview with Mr Peter Verney the Appellant has otherwise gone on to give specific geographical references for the place that he was born and references to the towns or villages that surrounded the place that he was born. There is nothing on the basis of what he has said that is contrary to the known practices of the Tunjur Clan. Mr Verney is satisfied on the basis of the evidence that the Appellant has a fair claim to be of Tunjur ethnicity.
34. The only factor that weighs against him in that regard is the general credibility of his account. The inconsistencies are set out within the refusal letter from paragraph 17 onwards. First and foremost it is suggested that the Appellant made a mistake with regard to the JEM raid in Omdurman having given two different dates. However the Appellant did correct himself and does have the date accurately recorded.
35. With regard to the JEM raid on Omdurman it is suggested that the Appellant failed to provide a detailed and coherent account. The Appellant himself seems to indicate that he was in his shop on the day of the incident. It suggested that there was some discrepancy as to what he was saying with regard to how long the incident occurred. It suggested that the Appellant's knowledge of such is basic and generic and that the Appellant does not have sufficient knowledge of this event to indicate that he was present in Omdurman at the time that it occurred.
36. Whilst it is suggested in the refusal letter in the Appellant's claim, that whilst he was arrested his brother Suleman was not, was inconsistent with the background information and that if Suleman had been present he would have been arrested. Such appears to give a rational basis as to what the authorities were doing. The authorities were aware that the Appellant was the proprietor of the shop and that he was of non-Arabic origin. That would be sufficient for them to arrest him.
37. In paragraph 23 there is a suggestion that the authorities specifically targeted him and wanted information about Bashir but suggests that this is not credible. However one only has to look at the report of Mr Verney to see that that is exactly what the authorities in the Sudan were doing at the time. Whether or not there was any justification for suspecting Bashir was not the issue. The authorities were arresting individuals forcing them to sign papers and then releasing them on their agreement to spy upon other individuals whether or not such was justified.
38. I have considered with care all of the discrepancies and inconsistencies that are submitted by the Respondent. I do not find that such details undermine or go to the core of the Appellant's account.
39. I am satisfied on the basis of the information presented that the Appellant is of the Tunjur Clan. I am satisfied that the appellant knew customs and practices of the Tunjur and was able to give detailed geographical locations for the clan and his birth place. In making that finding I take account of the interview record where the

Appellant clearly gives some detail that is consistent with the known facts about the Tunjur and also the further interview with Mr Verney where again the Appellant gives information specific to where he was born which is consistent with known facts about the area and the Tunjur that live there. I am satisfied on the basis of that evidence that the Appellant is genuinely an ethnic Tunjur.

40. On the basis of the country guidance case it is clear that non-Arabic tribal groups from Darfur are at risk if returned to Sudan. The Appellant is clearly a non-Arabic tribal group member and upon return to Sudan would in accordance with the country guidance case be at risk of being subjected to treatment that would constitute persecution or inhuman or degrading treatment or punishment. I am satisfied that the Appellant would be subject to such by reason of his ethnic origins as a member of the Tunjur Clan. I am therefore satisfied that the Appellant is entitled to asylum or relief on the grounds of Articles 2 and 3 of the ECHR.
41. I therefore allow this appeal on the basis of the findings of fact set out above.

**Notice of Decision**

42. I allow the appeal on asylum grounds.
43. I make no finding on humanitarian protection.
44. I allow the appeal on Articles 2 and 3 of the ECHR grounds.
45. I make no anonymity direction.
46. I make no fee award.

Signed

Date

Deputy Upper Tribunal Judge McClure