



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

Appeal Number: AA/10349/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 30 May 2017**

**Decision & Reasons Promulgated  
On 5 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**LEON DE LUCAS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Cole, Parker Rhodes Hickmotts, Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is my decision following the resumed hearing at Bradford on 30 May 2017. In a decision promulgated on 19 October 2016, I found that the previous Tribunal had erred in law. My decision was as follows:

1. The appellant, Leon De Lucas, was born on 25 July 1974 and was found by the First-tier Tribunal to be a citizen of South Sudan. He appealed

against the decision of the respondent who refused to grant him asylum and humanitarian protection dated 10 July 2015. The First-tier Tribunal (Judge Turlock) in a decision promulgated on 20 June 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Judge Turlock found that the appellant was a citizen of South Sudan [41]. Thereafter, he correctly observed [42] that “the question... is whether the appellant would be at risk if he were returned to South Sudan.” He recorded [45] that, during “the appellant’s period of residency in the United Kingdom it has been recognised that the country of Sudan has formally split into two independently recognised sovereign states, Sudan and South Sudan.” The judge went on to record that the appellant had produced a bundle of evidence and sought to argue that the level of indiscriminate violence in South Sudan was such that he required humanitarian protection within the United Kingdom. The judge quotes at length [46-48] two extracts from material produced by the appellant in particular from the UNHCR and Voice of America News. Without any further comment, he stated at [49]:

The respondent acknowledged that South Sudan is currently experiencing a deterioration in the security situation. Reference is made to a report from Amnesty International dated 8 May 2014 which corroborated an escalation in fighting across South Sudan with increasing reports of violence in the states of Jongeli, Unity and Upper Nile (see paragraph 13 of the letter of refusal).

There is no evidence to show that there are factors particular to the personal circumstances of the appellant which puts him at a greater risk than other civilians in South Sudan. Having considered the evidence produced regarding the current situation in South Sudan I do not find that it is such that the appellant would be at risk solely on account of his presence in the country. Whilst there is ongoing fighting in South Sudan there is not such a breakdown of law and order so as to create the level of risk which is required for a claim to succeed on the basis of Article 15(c).

Although the appellant has been in the UK for a number of years it was not contended that the return of the appellant to South Sudan would be a breach of his right to respect for his private or family life.

3. It is not clear from the quotations from the background material at [47-48] whether the judge considered that these materials assisted the appellant or otherwise. The judge’s comment [50] appears to indicate little more than that the appellant is at no greater risk than anyone else in South Sudan. Moreover, when assessing the risk to the appellant under Article 15(c), it would have been helpful if the judge had said exactly why he considered that there was “not such a breakdown of law and order so as to create a level of risk which is required for... Article 15(c)”. Likewise, the judge should have indicated exactly what he considered to be “the evidence produced regarding the current situation in South Sudan” that had led him to find that this particular appellant is not in need of humanitarian protection.

4. I make the observations in the paragraphs above fully aware that a First-tier Tribunal Judge has an almost impossible task when, faced with a heavy list of asylum and other cases, he is called upon to carry out a

detailed assessment of the risk to an appellant in a country such as South Sudan for which (as Designated Judge Woodcraft observed when granting permission) there exists no current country guidance at all. Given the pressures on the First-tier Tribunal, it is perhaps the case that an issue such as that before Judge Turlock in this appeal may only be adequately considered in the Upper Tribunal.

5. With those observations in mind, I set aside the First-tier Tribunal's decision. The Upper Tribunal shall re-make the decision following a resumed hearing. Both representatives agreed that this may be a case where formal country guidance will need to be given by the Upper Tribunal. I therefore make the following directions.

#### DIRECTIONS

(i) Having set aside the decision of the First-tier Tribunal promulgated on 20 June 2016, this appeal should be listed before Upper Tribunal Judge Clive Lane at Bradford FOR MENTION ONLY (time estimate: 20 minutes) on the first available date after 1 November 2016.

#### Notice of Decision

The decision of the First-tier Tribunal promulgated on 20 June 2016 is set aside. The Tribunal's finding as to the appellant's nationality (South Sudanese) shall stand. Otherwise, the findings of the First-tier Tribunal shall not stand. The decision will be re-made in the Upper Tribunal following a resumed hearing (see directions above).

No anonymity direction is made.

2. On 31 January 2017, I gave directions for the hearing to take place at Bradford and for the parties to file and serve expert evidence in relation to country conditions in South Sudan. In readiness for the resumed hearing, the appellant's solicitors have produced a very helpful bundle containing the expert report upon which they rely. At the resumed hearing, the Tribunal was greatly assisted by the submissions made by Mrs Pettersen, for the Secretary of State. She highlighted a number of passages from the expert report which, *inter alia*, indicate that the appellant cannot return to his home area of South Sudan which is in an area of the country where violence is verging upon an ethnic and civil conflict. The expert report also confirms (62-65) that the United Nations has advised that all forced returns to South Sudan should be suspended on account of the extent and intensity of the conflict in the country and also the humanitarian situation currently prevailing. Mrs Pettersen submitted that the report painted a "particularly bad picture" of the country conditions and she told me that, notwithstanding the appellant's inability to return to his home area, there was no part of South Sudan to which the appellant could reasonably be

expected to return at the present time. This appellant has no family members who might assist him. It should also be remembered that he has been living in the United Kingdom since before the creation of the state of South Sudan; he has, somewhat bizarrely, never lived in South Sudan, which is now the country of his nationality.

3. In the early stages of the case management of this appeal, both the parties and I considered that the appellant's case may be suitable to become a country guidance case for South Sudan as regards which there is at present no guidance from the Upper Tribunal. The Secretary of State ultimately took the view that there were too few asylum seekers from South Sudan living in the United Kingdom to make such an exercise worthwhile. In the circumstances, it does not seem to be a proper use of the Upper Tribunal's resources to embark upon a lengthy and detailed examination of the country material and the expert report especially in light of the fact that Mrs Pettersen has made clear that the Secretary of State considers that it is not possible for this appellant to return to South Sudan at the present time on account of the conflict and desperate humanitarian condition prevailing there. I would stress that anyone reading this decision should not necessarily draw the conclusion that any citizen of South Sudan may not be returned at the present time; obviously, every appeal needs to be determined on its own particular facts. However, in the light of the evidence which I have before me and in the light of the helpful submissions made to me by Mrs Pettersen, I remake the decision allowing the appeal on humanitarian protection/Article 3 ECHR grounds.

### **Notice of Decision**

4. This appeal is allowed on human rights grounds (Article 3 ECHR).
5. The appellant is entitled to a grant of humanitarian protection.

No anonymity direction is made.

Signed

Date 1 June 2017

Upper Tribunal Judge Clive Lane

### **TO THE RESPONDENT** **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 1 June 2017

Upper Tribunal Judge Clive Lane