



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03465/2015

THE IMMIGRATION ACTS

Heard at Manchester  
On 14 May 2018

Decision & Reasons Promulgated  
On 06 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

AA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Pratt, Solicitor instructed by Waddell Taylor Bryan Solicitors  
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a resumed hearing in relation to the Appellant's protection claim. Anonymity shall continue. As I set out in my previous decision at the hearing on 8 March, the Appellant is a citizen of Sudan. The issue in this case is whether or not he is of Darfuri ethnicity. If he is of that ethnicity then the Respondent agrees that the Appellant's asylum claim should be allowed. I had said at paragraphs 4, 5 and 6 of my earlier decision that:

"4. The [First tier Tribunal] Judge had made detailed findings against the Appellant, but this was a remitted hearing, partially on a similar issue to that which arose previously. Namely can the Appellant really speak in the Maba language/dialect? If he can then that will go a significant way to prove his claimed links to his claimed tribe and

thereby to the Darfuri ethnicity and heritage. Indeed, one can go further to say that being able to speak the Maba language *would* show he is Darfuri.

5. The [First tier Tribunal] Judge had noted at paragraph 12 of his decision that the Appellant's solicitors had sought a Maba interpreter for the hearing. As it happens, the Appellant also speaks Arabic, but this appeal is not based on any arguments that the Appellant did not understand the interpreter or the proceedings. Instead the Appellant contends that had the Tribunal made the Maba interpreter available, then the Judge's finding at paragraph 45 that the Appellant had not 'established' his ability to speak Maba at the hearing was not through any fault of his.
6. Mr McVeety takes a very fair approach today. He says the matter is unopposed in that he concedes that there is a material error of law in the Judge's decision. In my judgment that concession is properly made. It is a procedural error for there not to have been an interpreter in Maba, despite one having been requested. ... I am grateful to Mr McVeety for his indication that he will assist to ensure that the further evidence that I have directed be obtained by the Appellant will be considered by him personally. E-mail addresses were exchanged between the representatives."
3. At the hearing before me today Mr Pratt has submitted that he relies on a witness statement of Mr Omran Abdallah Hassan Suliman. In Mr Suliman's statement dated 4 May 2018 he states that he was born in Darfur, he is now a British citizen. He is a native speaker of the Maba language and an interpreter/translator between English and Maba. He attaches his full CV and that he was Chairman of the Maba Community in the UK and Ireland between 2013 and 2016. He says he was asked to give an opinion in relation to the Appellant's abilities to be able to speak Maba. He makes clear in his statement that he was not known to the Appellant prior to the discussion which had taken place for the purposes of the witness statement. He makes clear that he has provided a truthful and honest professional opinion and that his overriding duty is to the court regardless of whom he has been instructed by. He explained that after a conversation with the Appellant for some twenty minutes which took place in the Maba language throughout, that each of them understood each other completely. He said also:

"In order to establish whether or not he is fluent in this language I discussed with him in Maba different areas including traditions, cultural matters and some dialect such as the names of old things and things which will not be understood by individuals not conversant with Maba language and dialect"

and then the witness makes clear that it is his professional opinion, including because of the way in which the words were pronounced by the Appellant, that the Appellant spoke the Maba language fluently.

4. Mr Bates was not aware of the actual contents of my Error of Law Decision, so I read those aspects out to him after he had made initial submissions in relation to the First-tier Tribunal Judge's decisions at paragraphs 26 to 43. Having explained those aspects, Mr Bates said he could now see that the case depended upon the veracity of the witness statement of Mr Suliman. Mr Bates was entirely realistic in his submissions.
5. In my judgment, looking at particularly at the history of this Appellant having sought a Maba interpreter on numerous occasions, but when one has never been provided, it goes a long way in showing he has made attempts to prove his ability in the Maba language. Now, via Mr Suliman, the Appellant himself has taken the time and trouble to research who may be an appropriate person to undertake an assessment of his abilities in the Maba language. The Appellant has found, in my judgment, somebody who is proficient in being able to provide such evidence. The detailed discussion between the Appellant and the witness (Mr Suliman) of some twenty minutes with scrutiny of various aspects of the way in which the language is spoken clearly meets the lower standard of proof. In my judgment there is overwhelming evidence that that the Appellant does indeed speak in the Maba language.
6. Therefore, in view of the way in which the Secretary of State has approached the case in the recent past, namely that if the Appellant speaks the Maba language then that goes to show that the Appellant is indeed Darfuri, shows that there is only possible outcome. In my judgment the Appellant has shown to the required standard that he is Darfuri and therefore there can be no doubt whatsoever that the asylum claim must succeed. That is because Darfuris are persecuted on return to Sudan.

### **Notice of Decision**

The First-tier Tribunal Judge materially erred in law. That decision is set aside. I substitute a decision allowing the Appellant's asylum claim.

### **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 their 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.

Signed: A. Mahmood

Date: 14 May 2018

Deputy Upper Tribunal Judge Mahmood