Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03481/2016**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 4 April 2018	**On 18 April 2018**

Before

UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

KAMH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain instructed by Halliday Reeves Law Firm
For the Respondent: Mr Diwyncz, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The anonymity order made in the First-tier Tribunal is to continue. Pursuant rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the disclosure or publication of any matter likely to lead to members of the public identifying the appellant who will be referred to as KAMH is prohibited. Failure to comply with this order may result in contempt of court proceedings.

2. The appellant appeals with permission of Upper Tribunal Judge Grubb the decision of First-tier Tribunal Judge Cope who dismissed his appeal on all grounds against the Secretary of State's decision dated 20 March 2016 refusing his asylum claim. The appellant is a national of Sudan where he was born on [ ] 1990. His claim to international protection is based on his membership of the Al Goran tribe in Sudan. This led to adverse attention from the authorities and specifically in June 2015 the appellant was detained by the armed forces for a period of several days during which he was ill-treated. He was released on his agreement to report every week with information on rebel groups and required to stay in his home area. He never reported and left the country, making his way to the United Kingdom.

3. The Secretary of State did not accept the appellant's tribal membership or that he had been arrested and detained.

4. The appellant gave evidence before the First-tier Tribunal Judge when he was represented by Counsel and additionally he relied on an expert report by Mr Peter Verney.

5. In his findings and analysis on the evidence, the judge began with an observation at [37] and [38]

> "37. A basic difficulty for the Appellant it seems to me is the complete lack of any background evidence in relation to the Goran tribe. He and his solicitors have simply failed to produce any such evidence to show that the tribe even exists let alone what its characteristics, culture, customs etc are, or the extent of the population and where they actually reside in Sudan. Similarly there is a complete lack of background evidence regarding any Goran language.
>
> 38. Instead there is much evidence adduced in relation to the situation for African people from the Darfur region, despite the fact that the Appellant has never claimed to be African Dafuri or to be from or have links with that particular part of Sudan."

Nevertheless, the judge explained at [39] to [41]

> "39. Having said that I am prepared to proceed on the basis that there is indeed an ethnic group of people called the Goran. The Respondent seems to have implicitly accepted throughout the asylum application and appeal process that there is such a tribe although she has made it clear that she does not accept that the Appellant is a member. Similarly, there is nothing in Mr Verney's report to indicate that the Goran do not exist.
>
> 40. Albeit with some hesitation given the lack of direct evidence on the issue, for similar reasons I am prepared to accept for the purposes of this appeal that there is a Goran language.
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> 41. I would make it clear however that I consider that the questions of the geographical location of the Goran tribe in Sudan and whether the Appellant does have that racial or ethnic identity or if he speaks the Goran language are matters that remain at issue in this appeal."

After identifying a number of inconsistencies regarding the appellant's tribal membership the judge observed at [53] to [56]:-

> "53. Finally I need to refer to the physical appearance of the Appellant albeit that I regard any such comments as being invidious to say the least. Drawing general conclusions about race and/or ethnicity on the basis of an individual's physical appearance can be fraught with difficulty and misunderstanding. However in a case such as this it seems to me that some comment is inevitable given the dichotomy between Arabs and Africans in Sudan that I have dealt with above, and that it is explicitly part of the Appellant's case that he would be identified as African by reason of his physical appearance.
>
> 54. As I told the representatives, all that I can say in this case is that the skin colour of the Appellant is light brown; and that he was wearing a hat covering all his hair throughout the appeal.
>
> 55. I would simply observe that on the basis of his skin colour or any other physical feature such as hair I myself am unable to conclude that it is reasonably likely the Appellant would be regarded as an African in Sudan.
>
> 56. As a matter of fairness to the parties I indicated at the end of the hearing that this was my provisional view. Both Mr Boyle and Mr Stainthorpe accepted that this was the situation and agreed that my remarks were fair comment: neither attempted to persuade me to take any other view of the Appellant's physical characteristics."

He thereafter returned to the report by Mr Verney and proceeded with a critique of the report with an opening consent at [59]:-

> "59. A major concern that I do have about this report from Mr Verney is the methodology that he has used to produce it. There is a section of the report at pp.3-12 in which the transcript of the interview is intermixed with observations and comments made by Mr Verney himself. This is not helpful – far better to have had a discrete record of the interview with comments given separately. Furthermore it is not clear to me whether the transcript of the interview is complete, and whether all of Mr Verney's questions are included in it."

In addition, the judge was critical of the absence of any material from a Dr Turbiana who had been consulted by Mr Verney in respect of the appellant's competence in the Goran language. He then turned to the Human Rights Watch Country report on Chad 2007 which had been referred to by Mr Verney. He considered it permissible with reference to *AM (Sudan)* [2015] UKUT 00656 (IAC) to look at the report himself. He observed at [81]

> "81. There is no mention whatsoever made of the Goran tribe in that Human Rights Watch report."

In the light of his misgivings the judge explained at [88]

> "88. That being so, although I have considered the evidence as a whole from the Appellant himself and from Mr Verney I am unable to accept that it has been shown that it is reasonably likely that

> the Appellant is an African from Sudan and specifically that he is a member of the Goran tribe."

He thereafter turned to the detail of the appellant's adverse encounter. After identifying a number of inconsistencies in the account he concluded at [135]

> "135. I would make it clear that I simply do not believe that the events described by the Appellant as having happened to him actually took place. In particular whilst I accept that he is Sudanese citizen, I am not satisfied that he has shown even on a reasonable likelihood basis that he is from the Goran tribe nor that he has shown that he is, or would be regarded as, an African living in Sudan; that he was accused of being involved in providing support to anti-government forces; that he was arrested; detained and mistreated during detention; that he was released on condition that he provided information to the authorities; that he failed to report to the authorities as required; or that as a result he had to leave Sudan."

6. The grounds of challenge are twofold. The first asserts that the judge failed to properly grasp or consider the evidence provided in the report by Mr Verney. The second questions the legal correctness of the assessment of the appellant's ethnicity by reference to his skin colour.

Discussion

7. Discussion as to the first ground began with our enquiry over the judge's conclusion that the Goran were not mentioned in the Human Rights Watch report. Unsatisfactorily this was not in Mr Hussain's papers but we provided him with a copy and directed him to identify the references to the Goran. As it turns out there are several. Under the heading "Glossary of Ethnic Groups in Chad" there is this reference

> "Goran
>
> Also known as Toubou, this non-Arab ethnic group mainly lives in Northern Chad, but also in Sudan, Libya and Niger. Most are nomadic herders; others are semi-nomadic."

Whilst the report is naturally focussed on the situation in Chad, it is clear from any reading that the Goran have a border presence and furthermore exists in Sudan.

8. This aspect was not specifically mentioned in the ground of challenge but it is material and goes to the heart claim. We consider that it should be treated as *Robinson obvious* and, in any event, it comes within the challenge to the treatment of the evidence by the judge. With appropriate candour, Mr Diwyncz accepted there are references to the Goran in the report and, as acknowledged by the judge himself, the report had been read after the hearing. Although the judge had indicated in his decision that he was prepared to proceed on the basis that there was an ethnic group called the Goran, Mr Diwyncz acknowledged that the concern expressed over the absence of information might well have impacted on the judge's analysis. His conclusion on the appellant's membership was therefore unsafe.

9. We consider this a realistic concession. Whilst we accept that the judge considered the appeal on the basis that a tribe called the Goran existed, having decided that there was a complete lack of any background evidence in relation to the tribe (when there was in Mr Verney's report) and having concluded that there was no reference to the tribe in the Human Rights Watch report (although in fact it did) we are of the view that the ultimate conclusion that the appellant was not a member might well have been infected by the error over the evidence. We cannot be sure but as this is a protection claim on which there is a low standard of proof and taking into account Mr Diwyncz's concession, we conclude that for this reason alone, the decision should be set aside and remade.

10. That being so we do not consider there is a need to consider in any detail the other grounds of challenge although we make the following observations. We consider that the concerns expressed by Judge Cope over the methodology and format of Mr Verney's report have validity as acknowledged by Mr Hussain. The impact of these aspects and the absence of any direct evidence from Dr Tubiana will be a matter for the tribunal remaking the decision.

11. We see force in the ground challenging Judge Cope's findings on the appellant's appearance and as also acknowledged by Mr Hussain. There is no indication of what evidence of the appearance of someone claiming to be Gorani the judge took into account in reaching his findings based on the appearance of the appellant at [53] to [55] despite the reference to the discussion that ensued as recorded at [56].

12. The grounds do not challenge the findings by Judge Cope on the account of difficulties that the appellant claims to have specifically encountered which was accepted before us. Accordingly, we do not consider nor was it argued that these findings are tainted by the errors committed by Judge Cope. The judge's reasoning and findings on these aspects begin at [91] of his decision and conclude at [134]. These are preserved for the remaking of the decision. The parties agreed that issues to be addressed in the remaking will be

    (a) Is the appellant a member of the Goran tribe?

    (b) Is being a member of the Goran tribe a risk factor absent any risk of harm prior to flight from Sudan?

Decision

13. Error of law by the First-tier Tribunal requiring the decision to be set aside is conceded by the Secretary of State. The decision is set aside. Given the extent of findings required as to the appellant's origins, the appeal is remitted to the First-tier Tribunal for its reconsideration based on the issues and matters preserved in [12] above.

Signed

Date 16 April 2018

UTJ DAWSON

Upper Tribunal Judge Dawson