Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09903/2017

THE IMMIGRATION ACTS

Heard at Field House	**Oral Decision & Reasons Promulgated**
On 13 February 2018	**On 9 March 2018**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOUSSA [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S. Kotas, Home Office Presenting Officer
For the Respondent: Miss P. Yong, Davies. Blunden & Evans Solicitors

REASONS FOR FINDING AN ERROR OF LAW

1. The Secretary of State appeals against the determination of Fist-tier Tribunal Judge Quinn promulgated on 16 November 2017 in which he allowed the appeal of Mr [A] on all grounds; asylum, humanitarian protection, Articles 2, 3 and 8.

2. The Secretary of State appeals against that determination. For the purposes of continuity, I shall refer to Mr [A] as the appellant as he was in the First-tier Tribunal.

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3. The appellant is a citizen of Sudan who was born on [ ] 2000. He was 17½ at the date of the hearing and was just over 17½ when the material decision was made on 15th September 2017. The claim which the appellant advanced was set out principally in his witness statement at pages A2, A3 and A4 and, in that statement, he alleged that he was a child at the time he was recruited by the Sudanese Army and he was taken away by soldiers, held for two months, taught how to parade. That was in breach of the Sudanese government's own rules in relation to recruitment because, whilst the Sudanese has conscription, conscription is limited to Sudanese citizens between the ages of 18 and 33. He claims that, at the age of 14, when he was not of the official draft age, he was taken away and held by soldiers and forced to take part in military activities. It is said however that he suffered injuries and that he was admitted to hospital and that following his discharge from hospital the army continued to take an interest in him and, as a result of that, he is at risk of persecution from the army. He alleged that it is clear that armed groups including the government forces and government aligned militia continue to recruit child soldiers. That was something that the judge referred to in his determination. He said at paragraph 27 child soldiers did exist in Africa and it was possible that the appellant had been recruited to the army. He may have looked older than his true age.

4. I remind myself that I have to apply the lower standard of proof. The reference to child soldiers existing in *Africa* in general does not of course assist the appellant in this appeal because we know that each country has to be looked at individually. It does not assist an appellant merely to say that there are other countries where child soldiers exist.

5. The evidence in relation to Sudan that was before the First-tier Tribunal Judge was contained in the US State Department Country Reports on Human Rights Practices for 2016. This was extracted at page 75 of the bundle which says in these terms under the heading *Child Soldiers*:

> "The law prohibits the recruitment of children and provides criminal penalties for perpetrators. Allegations persisted, however, that armed movements, government forces, and government-aligned militias had child soldiers within their ranks.
>
> According to several reports, the government provided material and logistical support in the country to the South Sudan opposition group, Sudan People's Liberation Army in Opposition, which was widely reported to recruit and use child soldiers."

That does not in my judgment support the view that the government of Sudan widely recruits child soldiers. That is made clear from what thereafter follows and where it is said during the 27 March to 30 March visit of the UN special representative for children and armed conflict, the government signed an action plan to end and prevent recruitment and use of children by the security forces. The special representative documented 21 children detained by NISS since April and August 2015 for their alleged association with the rebel group JEM. The children had allegedly been recruited in South Kordofan and South Sudan and used in combat in

Darfur and South Sudan. However, the government expressly denied allegations that it recruited or used child soldiers within its armed forces. The background information therefore does not support the general proposition that the government uses child soldiers. At any rate the evidence is equivocal and consequently it had to be looked at with a degree of caution by the First-tier Tribunal Judge when he was considering that claim.

It is clear that he did not accept the appellant's own evidence about these events. He said in paragraph 28:

> "I did not accept the Appellant was a person of special interest to the army and neither did I accept that they had made repeated visits to find him following his release from hospital. If the army were looking for the Appellant it was logical that he should not return home."

6. In paragraph 29 however it is said.

> "The Appellant's account was plausible, namely that it had been abandoned by the army because of his injuries. Thereafter he had been treated in hospital and discharged home."

That it seems to me is an indication that the judge did not accept that the army was showing any continued interest in the appellant. The determination continues however,

> "Thereafter there were attempts to put him back into the army."

That phrase seems to sit uncomfortably with what the judge said in paragraph 28 that he did not accept that the authorities had made repeated attempts to visit him following his release from hospital. If follows that it is not at all clear the basis upon which the judge reached the conclusion that the appellant was at risk of being forcibly recruited into the army as a result of his age.

7. The judge relied upon page 75 of the report, to which I have referred, as lending support to the appellant's contention that he had been recruited by the army as a child soldier, but it is clear to me that on a proper reading of the background material contained in the US State Department Report that this is not what the report is saying.

8. The judge goes on to say, dealing with page 76 of the appellant's bundle, that there were references to the reports of the use of child soldiers by SPLM-N and this lent credence to the appellant's statement that was in fear of persecution. In my judgment that cannot lead credence to that. He has never suggested that he had been approached by the SPLM-N for the purposes of acting as a child soldier. There is no suggestion that he lives in an area which is under the control of the SPLM-N or that they would have the ability to persecute him. Nor is there a suggestion that, were he to return to the capital, he would be similarly at risk of the SPLM-N. The judge's reliance upon the fact that a militia opposition group dealing with opposition in

South Sudan, although located in Sudan itself, recruits child soldiers, is not evidence that the appellant's claim is more or less credible that he was forcibly recruited as a child soldier by the Sudanese authorities. Consequently, I do not consider that the judge's reasoning in relation to the core of the appellant's claim is sustainable. The judge then goes on to find that the asylum claim has been made out. He also finds that he succeeds in humanitarian protection (an alternative claim but only available when asylum fails). He then goes on to deal with Articles 2 and 3.

9. It is said that the appellant would face significant difficulties if he were returned to Sudan. He would have no livelihood and nowhere to return to and no support mechanism in place. The judge found he was undoubtedly likely to face destitution and possible starvation. That, it seems to me, is made on the basis of the claim that he has been forcibly recruited as a child solider by the Sudanese authorities. It does hold up to examination if that part of the determination is set aside. For these reasons, I find that there was an error of law. None of the findings in relation to Articles 2, 3 and 8 can properly stand independently of the finding made by the judge that the appellant was at risk of persecution by the Sudanese authorities.

10. In those circumstances, I direct that the case will require re-making. It seems to me that the re-making is a root and branch task that needs proper findings of fact made on all issues, in which case I direct it goes back to the First-tier Tribunal.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
Date: 9 March 2018