



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10422/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25 July 2018

Decision & Reasons Promulgated
On 21 August 2018

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

Y B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Knight of Duncan Lewis, Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Sudan who was born on 19 August 1998.

3. The appellant arrived in the United Kingdom on 25 August 2015 as an illegal entrant. He claimed asylum on 25 August 2017. The basis of his claim was that his father and uncle had been arrested for political activity in Sudan and the appellant was suspected of involvement with the Justice & Equality Movement (“JEM”) and because of his Berti ethnicity, a non-Arab Darfuri tribe.
4. On 5 October 2017, the Secretary of State refused the appellant’s claim for asylum, humanitarian protection and also on the basis that his removal would breach Art 8 of the ECHR. The Secretary of State did not accept the appellant’s account of his family’s political activity or that he was a member of the Berti tribe.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a decision promulgated on 8 December 2017, Judge R Sullivan dismissed the appellant’s appeal on all grounds. He rejected the appellant’s account that his family had been politically active and involved with the JEM and that he has been suspected of association with the JEM. In addition, the judge did not accept that the appellant was a member of the Berti tribe.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal challenging only the judge’s adverse finding that the appellant had not established that he was a member of the Berti tribe. The judge’s adverse finding in relation to his family’s claimed involvement with the JEM and his claim that he would be suspected of association with the JEM was not challenged.
7. On 22 March 2018, the First-tier Tribunal (Judge I D Boyes) granted the appellant permission to appeal on that ground.

The Submissions

8. Mr Knight, who represented the appellant, relied upon the grounds and his skeleton argument. He submitted that the judge had failed to give adequate reasons for finding that the appellant had not established that he was a member of the Berti tribe. The judge has accepted that a number of the appellant’s answers in interview were not inconsistent with his membership of that tribe and several of his answers could be verified. He also had a name which was, in itself, evidence of his membership of that tribe. Mr Knight submitted that it was perfectly possible for the appellant to have embellished his claim, and which the judge had rejected as regards his political involvement, whilst nevertheless telling the truth about his ethnic origin. He relied upon the decision in Chiver [1997] INLR 212 in that regard. Mr Knight submitted that if the appellant had been making up his ethnic origin, he would have been caught out.
9. Mr Tufan, who represented the respondent, submitted that there had been no expert report produced and it was merely the appellant’s assertion, together with that of his witness Mr A that he was a member of the Berti tribe. The judge had given reasons, Mr Tufan submitted, why he did not accept Mr A’s evidence. Although, Mr Tufan accepted that when the judge referred to there being no documentary evidence to confirm that Mr A had been granted refugee status because of his membership of the Berti tribe, Mr Tufan’s investigation had shown that to be the case. Mr Tufan relied

upon the judge's adverse credibility finding in relation to his personal account for which he gave reasons at para 23(a) – (e) and 24. Mr Tufan submitted that the decision in Chiver did not preclude the judge from making his adverse finding.

Discussion

10. At paras 20 – 24 of his determination, the judge gave a number of reasons for concluding that he did not accept the appellant's personal account of why he was at risk because of any perceived association with the JEM. It is not necessary to set these out in any detail as the appellant has not challenged the judge's finding. Suffice it to say that at para 24 the judge said this:

“I find that in important details the appellant has not given a complete or consistent account. I find that he has changed his evidence on key details of relatively few incidents. I am not satisfied that he has told the truth about the arrest of his uncle, his own encounters with the police or attempts by them to arrest him. I am not satisfied that he is suspected of association with JEM. In my view the appellant's credibility is damaged; it is a material consideration in assessing other parts of his claim.”

11. Mr Knight did not challenge the judge's statement at the end of para 24, that his adverse credibility finding in relation to the appellant's account was a “material consideration” when assessing the other parts of his claim, namely that he was at risk as a member of the Berti tribe.
12. The judge's reasoning in relation to that aspect of the appellant's claim is at paras 25 – 28 as follows:

“25. In my view Mr [A]'s evidence does not lend credible support to the Appellant's claims. Notwithstanding that they claim to have met in the United Kingdom in November or December 2016 the Appellant waited until the day of the hearing to provide a supporting witness statement from Mr [A]. There is no documentary evidence to confirm that Mr [A] was granted refugee status as a member of the Al Berti tribe and at one stage of his oral evidence he said that he had fled Sudan because he had been arrested there and that he had claimed asylum on political grounds. There is no suggestion that Mr [A] had ever met the Appellant in Sudan. Mr [A] claims to know that the Appellant is from the Al Berti tribe because he (Mr [A]) is from that tribe and he knew the Appellant's uncle and knew him to be a member of the All Berti tribe. His account of his acquaintance with the uncle is not one I find plausible. He said that he and the uncle were both shepherds and that the uncle used to take his sheep Mr [A]'s village to graze. On further enquiry it transpired that Mr [A]'s home was some 12 – 13 hours by bus from the Appellant's home area. I do not find it credible that he met an uncle of the Appellant's in the circumstances he describes. There is also nothing to explain why, Mr [A] having arrived in the United Kingdom in May 2015, the uncle in Sudan would in November/December 2016 have had Mr [A]'s UK telephone number to contact him and ask him to make contact with the Appellant in the United Kingdom. I am not satisfied that Mr A is a reliable witness.

26. Nothing in the Appellant's answers in interview was inconsistent with membership of the Al Berti tribe and several of his answers could be verified. This is to his credit and I take it into account.
 27. The Appellant's representative submits that the Appellant's name is of itself evidence of membership of the Al Berti tribe. My attention has not been drawn to any documentary evidence confirming his identity but I take into account that he is using [that name].
 28. Having considered all of the evidence I am not satisfied that the Appellant has given a truthful account of his background. I am not satisfied that he is a member of the Al Berti tribe (and thus a non-Arab Darfuri), that he is of any interest to the authorities in Sudan or that he is regarded by them as a threat to their regime. On his own account he has never engaged in political activity. His removal would not breach the 2006 regulations."
13. It is clear law that a judge must give adequate reasons for a finding. That means, in effect, that sufficient reasons are given such that the parties (in particular the losing party) know why an adverse finding has been reached and why a claim is unsuccessful.
 14. Here, as Mr Knight acknowledged, the judge was entitled to take into account that he disbelieved the appellant's evidence about his family's involvement with, and therefore the risk to him as a perceived member of, the JEM. The judge's finding, which is not challenged, is in effect that the appellant has not told the truth in that regard (see especially para 24 set out above). In assessing whether to accept the appellant's claim that he is a member of the Berti tribe, the judge was entitled to take into account that the appellant was not a witness of truth.
 15. Of course, the appellant adduced evidence from Mr A to support his claim to be a member of the Berti tribe. However, in para 25 the judge did not believe Mr A that he knew the appellant's uncle and that, given his knowledge of the appellant's family, that the appellant was a member of the Berti tribe. Although Mr Tufan acknowledged that Mr A had in fact been granted refugee status because he was, through his mother, taken to be a member of the Berti tribe, that evidence was not before the judge. In any event, that did not materially undermine the judge's reasoning in para 25 which led him to disbelieve Mr A's evidence that he knew the appellant's uncle and the family background.
 16. The judge was, therefore, left with the evidence of the appellant which, as regards the core of his claim, he had found him not to be truthful and another witness whose evidence, likewise, he simply did not accept.
 17. Against that, the appellant's knowledge about the Berti tribe was recognised by the judge at para 26 and he took it into account to the appellant's credit. Likewise, at para 27 he took into account that his name was consistent with membership of the tribe.
 18. It remained, however, for the appellant to establish on a balance of probabilities that the evidence established his membership of his claimed tribe. The judge was required to balance the positive aspects of the appellant's case against the negative aspects of the appellant's case. The decision in Chiver did not require the judge to accept that

the positive aspects, namely the appellant's knowledge and name, discharged the burden of proof given the negative aspects, namely his untruthfulness in respect of the core of his claim and that his supporting witness's evidence was not accepted by the judge.

19. Mr Knight relied upon the following passage in Chiver:

"It is perfectly possible for an Adjudicator to believe that a witness is not telling the truth about some matters, has exaggerated the story to make his case better, or is simply uncertain about matters, but still to be persuaded that the centrepiece of the story stands".

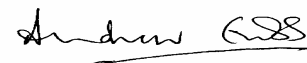
That is no more than a reminder that an individual may not be believed about some aspects of his account but, nevertheless, may be believed about other aspects of his account. It is difficult to characterise the aspects of the appellant's account that the judge found him to be untruthful upon as being 'exaggerations' of his story. They were not enhancements of a poor account that had the 'ring of truth'; rather, it was the whole of his account that the judge found to be untruthful.

20. In my judgment, it is perfectly plain in the judge's reason at para 25 – 28 and including what he says at the end of para 24 why he found that the appellant had not established he was a member of the Berti tribe. The positive aspects of his claim were not sufficient to outweigh the negative aspects of his claim so as to discharge the burden of proof upon him. The grounds do not seek to challenge the judge's adverse finding on the basis that it is irrational but only on the basis that he failed to give adequate reasons. In my judgment, he did give adequate reasons as I have already explained and therefore his adverse finding that the appellant has not established he is a member of the Berti clan is not legally flawed.

Decision

21. For these reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal on all grounds did not involve the making of an error of law. That decision stands.
22. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

13 August 2018