



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12648/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Glasgow
On 1st February 2018**

**Decision Promulgated
On 25th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

**Mr YSI
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Aslam of McGlashan McKay, Solicitors.
For the respondent: Mr. Miles Mathews, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant has been granted permission to appeal to the Upper Tribunal the decision of First-tier Tribunal Judge J.C.Grant-Hutchinson.
2. He is a national of Sudan born in July 1980. He claimed asylum in March 2007. This was refused in October 2010 and his appeal, heard by Immigration Judge Boyd, was dismissed in March 2011. In April and July 2013 he made unsuccessful representations. Following

judicial review proceedings his submissions were reconsidered and a fresh refusal decision issued in October 2016 with a right of appeal. It is this decision which was the subject matter of proceedings before First-tier Tribunal Judge J.C.Grant-Hutchinson.

3. His claimed he was at risk of persecution as a member of the non-Arab Berti tribe from Darfur and because of his activities in the United Kingdom with the Justice and Equality Movement (JEM).
4. First-tier Tribunal Judge J.C.Grant-Hutchinson applied the Devaseelan guidance, noting Immigration Judge Boyd was not satisfied the appellant was from the Berti tribe nor from Darfur. Immigration Judge Boyd had the benefit of an expert report contained in the appellant's bundle from Dr Peter Verney. This referred to the appellant displaying poor local geographical knowledge. The appellant had not produced any witnesses from the Berti tribe to vouch for his claimed ethnicity. In the original hearing his evidence was that whilst living in Glasgow he had no contact with members of his tribe. However, before First-tier Tribunal Judge J.C.Grant-Hutchinson he claimed that he did know people from his tribe when living in Glasgow. The judge found this to be an attempt to embellish his account.
5. The judge also considered his sur place activities. His representative had obtained a supplementary report from Mr Peter Verney. The appellant had provided a letter dated September 2012 from the Secretary-General of JEM in the United Kingdom. It refers to having met the appellant in August 2009 and refers to him taking part in demonstrations in the succeeding years and that he was an active member. However, the judge commented that when the appellant was interviewed in October 2010 he said he was not involved with the JEM. Consequently, the judge did not place reliance upon the Secretary-General's evidence. The judge also commented that the question of involvement with the JEM was not raised at the earlier hearing.
6. Permission to appeal is granted on the basis it was arguable the judge erred in relation to the material provided for the appeal; the letter from the Secretary-General of JEM; Dr Verney's supplementary report and the country guidance decision of MM (Darfuris) Sudan CG [2015] UKUT.
7. In a rule 24 response the appeal was opposed. It was pointed out that First-tier Tribunal Judge J.C.Grant-Hutchinson had noted in his earlier appeal he had not mentioned any JEM involvement. The letter from the chairperson for Sudanese in Glasgow did not comment upon the appellant's ethnicity or where he was from or his involvement with the JEM. It was submitted that the judge had applied the relevant case law and had given due regard to the expert reports. The judge gave reasons for finding discrepancies in

the appellant's account and the purported letter of support from the General Secretary of the JEM.

8. At the hearing, Mr Aslam submitted that the judge erred in applying Devaseelan, bearing in mind the new evidence, including the letter from the Secretary-General of the JEM and the supplementary expert report. He pointed out it was not necessary for the appellant to be from the Darfur region in order to succeed.
9. In response, the presenting officer submitted that the grounds advanced amounted to a disagreement with the conclusion in what was a well-reasoned decision. The judge, in referring to 'no new evidence' at paragraph 14 was indicating there was no new evidence which would lead to a different conclusion. The judge then went on to assess the additional evidence that had been submitted. Notably, the letter from the chairperson did not refer to the appellant's ethnicity.

Consideration

10. AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 found that all non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) held that "Darfuri" is to be understood as an ethnic term relating to origins, not as a geographical term.
11. When the appellant made his original claim he said that he was from the Berti tribe. He said he was uneducated and grew up with his parents and siblings on a farm near the village of Tina in Darfur. In his statement he said he was not a member of any political organisation in Sudan but nevertheless had encountered problems and was beaten by the Arab militia. He did say that he distributed leaflets after being approached by the JEM and that the authorities were aware of this. After the refusal of his claim he made a further statement in which he said his brother and cousin had been killed because of their tribal membership and that they were regularly attacked by the government and militias. He states he is an uneducated shepherd who did not know exactly where his home was located except it was in Darfur. He did say he has spent his entire life around the village of Tina.
12. The first report from Dr Verney is dated 23 February 2011 and was used in the appeal heard by Immigration Judge Boyd. At paragraph 5 he recorded that the appellant was not very forthcoming with details. He records at paragraph 7 that the appellant said he was born near Tina, western Darfur, and grew up in a remote settlement four or five hours walk from Tina. The village he described was more of a collection of scattered small dwellings. Dr Verney describes the Berti as being among the lighter skinned

Africans. At 35 he comments that in identifying an individual's tribal background the key factor is recognition by people known to be from the same tribe. At paragraph 36 Dr Verney commented 'if he can present recognised Berti people with a willingness to vouch for him, in the form of supporting statements, this would be highly significant'. At paragraph 66 Dr Verney concludes that the appellant is most probably of Darfuri origin because of his vocabulary and familiarity with local dishes but does acknowledge he displayed a paucity of local geographical knowledge which contrasts with his experience of other Sudanese. At paragraph 67 Dr Verney comments 'in the circumstances he may well be of Berti ethnic identity as he claims, but his general account was so sketchy that it was not possible to elicit sufficient corroborative detail'.

13. In the original appeal Immigration Judge Boyd recorded at paragraph 13 the appellant said he had Sudanese friends in the United Kingdom but they were not from Tina. He said he had met people from the Berti tribe but has no contact any more. At paragraph 22 the judge recorded his account at the various stages as being contradictory and inconsistent. Judge Boyd commented at paragraph 34 that the appellant in his asylum interview appeared to have relatively little knowledge of Darfur and this was confirmed in the report from Dr Verney. At paragraph 35 it was noted he had told Dr Verney since coming to the United Kingdom he had not met anyone from the Berti tribe whereas he told Judge Boyd he had. The judge concluded this was an attempt to embellish his claim. At paragraph 37 the judge concluded that the report from Dr Verney was not supportive of the appellant. The judge concluded his claim had been fabricated and that he had not demonstrated he was either from the Berti tribe or from Darfur.
14. Further representations were made based on the appellant being an active member of the Sudanese community in Glasgow since July 2012. A letter from the community in support of this was supplied. It was claimed he was an active member of the JEM party in the United Kingdom. The General Secretary of the JEM, Mr AS, confirmed this in a letter dated 20 September 2012 stating he first met the appellant in August 2009. A supplementary report was obtained from Dr Verney who confirmed he knows Mr. AS. The letter from Mr AS is reproduced in the bundle and is on headed paper with a photograph of the appellant. Mr AS confirms the appellant is an active member of the JEM UK. There is also a letter dated 25 September 2012 from a Mr OM, chairperson of the Sudanese Community in Glasgow. He states the appellant has been an active member of the community since 2012. The supplementary report from Dr Verney is dated 11th of April 2013. It refers to these documents. He indicates he had spoken to Mr AS who confirmed his statement that the appellant is a member of JEM. His conclusions about the appellant's background remain as in the first report.

15. IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 00188 (IAC) found that the Sudanese authorities place reliance upon information gathering about the activities of members of the Diaspora which includes covert surveillance. The nature and extent of the activities; when; and where; are relevant. There is the likelihood that the authorities will have to distinguish amongst a potentially large group of individuals between those who merit being targeted and those that do not.
16. In challenging the decision of First-tier Tribunal Judge J.C.Grant-Hutchinson it is contended that in applying Devaseelan she failed to take into account developments since the first decision, including the letters from the General Secretary of the JEM, Mr AS ; the letter from a Mr OM, Chairperson of the Sudanese Community in Glasgow and the supplementary report from Dr Verney.
17. The first point to note is that First-tier Tribunal Judge J.C.Grant-Hutchinson recites from the head note of Devaseelan that facts happening since the first determination can always be taken into account. The judge refers to the additional evidence. At paragraph 16 the judge deals with the supplementary report from Dr Verney.
18. The judge at paragraph 17 deals with the letter from Mr JS and his evidence that the appellant had appeared on photographs and demonstrations and so forth. The judge itemises the activities. At paragraph 18 the judge makes the point that when the appellant was interviewed in October 2010 he did not know about the JEM yet Mr JS said he had joined the movement in August 2009. In light of this inconsistency the judge legitimately questioned the reliability of this letter.
19. At paragraph 19 the judge refers to the first determination and the absence of reference to involvement as well as the appellant's statement of July 2013. The judge concluded this called into question his claimed involvement with the JEM in the United Kingdom. The judge was drawing upon inconsistencies in the evidence: this is a matter for the judge. The judge also deals with the letter from Mr O M at paragraph 20 and finds nothing in the letter to confirm the appellant's ethnicity or where he is from or his political involvement.
20. It is my conclusion the judge has clearly considered if there is any fresh evidence which would justify departure from the earlier findings and concluded none existed.
21. The judge went on to comment about the lack of evidence of ongoing activity. This is a legitimate observation. I can find no merit in the final ground advanced on behalf of the appellant.

22. In summary, I find this is a carefully prepared decision in which the judge has applied the correct legal principles, assessed the evidence and made findings open to her. Those conclusions are rational and indicate that the judge was aware that the first decision was not the end of the matter. The additional material was considered and the judge concluded the outcome remained the same. This was something open to the judge. The decision of MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) does not assist the appellant because his case has always been that he is from Darfur itself.

Decision

No material error of law has been established in the decision of First-tier Tribunal Judge J.C.Grant-Hutchinson. That decision, dismissing the appellant's appeal shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge
2018

20th April