Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00397/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre **Decision & Reasons Promulgated**
On 17 September 2019 **On 25 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR I S I A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr Assis, Counsel, instructed by Lei Dat & Baig Solicitors (Renshaw House)

DECISION AND REASONS

Background

1 This is an appeal brought by the Secretary of State against the decision of Judge of the First-tier Tribunal Gould dated 18 July 2019 in which the judge allowed the appeal of the Respondent, who was of disputed nationality. The Respondent had made a claim for protection, asserting that he was of Sudanese non-Arab Darfuri origin (in particular, being of the Bergo tribe); that in or around 2015 Janjaweed militia had launched attacks on his village; and that he and family members had

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suffered as a result. He gave an account of leaving the area and then ultimately leaving Sudan. He travelled through a number of countries including France before arriving in the United Kingdom and making his claim for protection on 3 July 2018.

2 The Appellant refused that claim for protection in a decision dated 27 December 2018, rejecting the Respondent's claim to be a national of Sudan, on the basis *inter alia* that there was a record that whilst in France he had given his nationality as being from Chad.

3 The Appellant also asserted in the decision letter that certain information given by the Respondent in interview, regarding the geography of the Darfur region, the use of currency, and the names of certain foods was inconsistent with country information.

4 The Appellant also asserted that there were inconsistencies in the Respondent's account regarding: the circumstances of the attacks by the Janjaweed (paragraph 59); when the attacks had taken place (paragraph 60); the use of vehicles and whether houses were searched (paragraph 61); whether the Respondent's father had been killed, or taken away, or had disappeared, and when that had happened (paragraph 62); the Respondent's escape from the region, and whether he left alone or with others (paragraph 63-64); and relating to the alleged involvement of the sheikh of the village in his escape, and the assistance subsequently said to have been given to the Respondent and a friend by another man, for whom they agreed to work (paragraph 65).

5 A proper reading of the Appellant's decision overall discloses that the issues informing the Appellant's view of the Respondent's nationality were not limited to the Respondent's knowledge of geography in Darfur and the customs of non-Arab Darfuri tribes persons, but also included the alleged discrepancies in the Respondent's account.

The Judge's decision

6 The Respondent appealed, and the matter came before the judge on 2 July 2019. Before the judge were witness statements of the Respondent, and a country expert report from Mr Peter Verney (pages 48 to 77 of the Respondent's bundle), which I have read. The judge made the following findings (paragraph 31):

> "The Appellant has repeatedly stated (SI Q1.9, AIR 5/9/18 Q5 and AIR 4/12/18 Q25) that he is Sudanese and has been consistent. The Respondent asserts that the Appellant is from Chad because, by his own admission, he told the French authorities that he was from Chad. In my judgment this comment needs to be assessed in the context in which it was made. The Appellant asserts that he made this comment because of a genuine fear that if he disclosed he was from Sudan he would be returned to Sudan and he had been told that other asylum seekers were being returned to Sudan (w/s, para 4). I reject the Respondent's submissions because the Appellant has been otherwise consistent and there is support for his explanation in an excerpt from media coverage in France (dated 22 March 2017) at page 37 of the Appellant's bundle confirming that the French authorities were returning asylum seekers from Darfur to Khartoum."

7 The judge also considered the alleged gaps in the Appellant's knowledge of Sudan as follows:

> "32. I reject the Respondent's submission that the knowledge that the Appellant demonstrated about Sudan could have been gained from living there for a period of time or by research. If the Respondent is correct that the Appellant is from Chad, there is no support for the proposition that the Appellant spent time in Sudan: it is no more than speculation without any evidential basis. Whilst I accept that some knowledge could be gleaned from research, the Appellant's ability to describe matters including traditions, culture and geography in such a level of detail is inconsistent with research as submitted by the Respondent. Accordingly, I find that the Appellant's intimate knowledge of Sudan is based on his life in Sudan over many years until he fled to Libya: he is credible and reliable."

8 The Home Office Presenting Officer had argued before the judge that little weight should be given to Mr Verney's report because he lacked expertise, in particular in his purported opinion as to the use of language by the Respondent. The judge found at paragraph 35 as follows:

> "35 In particular the Respondent submits that Mr Verney is unable to provide a linguistic assessment as he is unable to speak Bergo (confirmed by Mr Verney at paragraph 200). Whilst this is a superficially attractive submission it loses its force when assessed against Mr Verney's supplementary report (two pages, in the Appellant's bundle dated 13 June 2019). Mr Verney comprehensively answers the criticisms levelled against him and I accept that, whilst he is unable to speak Bergo himself, he is able to provide a linguistic assessment based on his experience. Furthermore, Mr Verney has taken the additional step of consulting with the other Sudanese language experts and this further enhances his opinion. For these reasons, I accept that Mr Verney is both objective and an expert and I rely on his conclusions.
>
> 36. Mr Verney concluded (para 321 – 333) that he was satisfied as to the Appellant's nationality beyond reasonable doubt. Mr Verney concluded that the Appellant spoke Sudanese Arabic with noticeable Darfuri influences and there was nothing in his use of Arabic that would indicate he came from Chad.
>
> 37. For the reasons set out, I am satisfied that the Appellant has proved to the lower standard and that he is a national of Sudan and I am satisfied that his assertion that he is a non-Arab from Darfur is reliable. It follows from my finding about the Appellant's nationality that I reject the Respondent's submission that the Appellant is a national of Chad."

9 The judge then stated at paragraph 39 that he followed the authority of AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC), which provided that "All non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan". The judge consequently allowed the appeal on asylum grounds.

Appeal to the Upper Tribunal

10 The Appellant appeals on grounds dated 26 July 2019 that the judge erred in law, in summary, firstly by failing to take into account issues raised in the decision letter and in failing to resolve certain conflicts of opinion. In particular, the Appellant argues that the refusal letter had raised disputes as to the Respondent's level of knowledge of local geography and his knowledge of the cost of living, which was internally and externally inconsistent. These issues were said to be key issues on consideration of nationality and that the judge erred by failing to consider or address these points when resolving the issue of nationality, or failed to give reasons as to why these issues were not material.

11 Secondly, the grounds argued that the judge considered the issue of risk on return to Sudan but that the decision was devoid of any findings on the Appellant's claim to have been the subject to an attack in 2015. A range of inconsistencies in the Respondent's evidence were raised in the refusal letter at paragraphs 59 to 67, yet the judge had not engaged with them and had not balanced these findings against any conclusions made by the expert Peter Verney, on whose report the judge heavily relied.

12 Thirdly, it was argued that the judge erred in failing to deal with the Presenting Officer's submission that the Respondent could internally relocate, that argument being based on certain passages within a Home Office Country Policy and Information Note regarding the alleged safety of non-Arab Darfuris within the Khartoum area and which suggested that the country guidance cases of AA and MM were no longer applicable.

13 Permission to appeal was granted by Designated Judge of the First-tier Tribunal Woodcraft on 15 August 2019, finding that the grounds were arguable.

Submissions

14 Mr McVeety noted in relation to the third ground, that in the case of AAR and AA (as yet unreported, PA/08701/2017 and PA/112245/2017), 7 August 2019 (which had been listed before the Upper Tribunal as potential Country Guidance on the issue of internal relocation in Khartoum for non-Arab Darfuris), the Secretary of State had recently conceded, given present volatile conditions in Sudan, that those appeals should be determined on the basis of the existing country guidance cases. The paragraph following paragraph 29 of that decision reads as follows:

> "The answer to the country guidance question that was originally asked in these appeals is as follows. The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable there is insufficient evidence currently available to show the guidance given in AA (non-Arab Darfuris – relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UJUT 00010 (IAC) requires revision. Those cases should still be followed."

Therefore, although not formally withdrawing the third ground, Mr McVeety did not pursue it.

15 In relation to the first ground, Mr McVeety argued that at paragraph 31 it was inconsistent for the judge to have described the Respondent as being 'consistent' in his evidence, when he had patently been inconsistent on one occasion, stating that he was from Chad.

16 Mr McVeety also argued that the judge had erroneously purported to adopt wholesale the opinion of Mr Verney, who had expressed the view that the Appellant's account was entirely credible. Mr McVeety argued that there were a number of matters, relating not only to matters of knowledge of geography and customs in Sudan, but also relating to inconsistencies within the Respondent's account, as set out within the refusal letter, which the judge had not dealt with himself.

17 Mr Assis argued that Mr Verney should be treated as a relevant expert, as found by the judge, that his report was detailed and the judge was entitled to place significant weight upon it, and that no material error of law was disclosed by the Appellant's grounds of appeal.

Discussion

18 In relation to the Appellant's third ground, it is apparent that the judge fails to state at paragraph 39 why the CG cases of AA and MM were still applicable, notwithstanding the evidence relied upon by the Appellant before the judge that conditions in Khartoum had improved sufficiently for non-Arab Darfuris that they could safely internally relocate there. Arguably, the judge's decision in this respect required greater reasoning. However, whether the judge's failure to provide such reasoning represents a material error of law is moot. Given the outcome in the recent case of AAR and AA, it is likely that any decision now being remade would result in a finding that internal relocation to Khartoum would not be a viable for a non-Arab Darfuri. I say 'likely', on the basis that AAR and AA itself does not yet appear to have been reported as Country Guidance, or indeed reported at all at the present time. It is not necessary for me to come to a concluded view about whether the judge's failure to provide further reasoning at paragraph 39 of the decision represents a material error, because I find that there are, for other reasons, material errors in the decision requiring the matter to be set aside and remitted to the First-tier Tribunal.

19 With respect to Mr McVeety's submission that the judge erred in law in purporting to find that the Respondent's account of his own nationality had been consistent, I find that the judge was clearly aware that it was an element of the Respondent's evidence that at one point he stated that he was from Chad. The judge considered that issue within paragraph 31, and made reference to certain country information which was said to be relevant to the phenomenon of Sudanese nationals in France fearing being removed to Sudan. I find that no material error of law is made out in respect of any ground alleging that the judge failed to take into account the Respondent's evidence that he had been from Chad, when considered as a discrete issue.

20 I turn to the judge's treatment of the expert evidence of Mr Peter Verney dated 11 March 2019, and the adequacy of the judge's findings on the Respondent's past account. The structure of Mr Verney's report is to first set out an interview with the Respondent, followed by a discussion of some discreet human rights issues, and then his conclusions. A significant proportion of Mr Verney's report is made up of the account of his interview with the Respondent, although not set out verbatim. Throughout that part of the report Mr Verney provides headings and it is clear that Mr Verney discussed certain paragraphs of the Appellant's decision letter with the Respondent. Mr Verney asked the Respondent some questions regarding the geography of Sudan. Mr Verney records the Respondent's answers, which demonstrated, according to Mr Verney's own experience, relevant knowledge of the geography of the area. The judge was clearly entitled to take that evidence into account and to treat it as expert evidence.

21 Mr Verney also opines at his paragraph 84, that there may have been an interpreting error on the part of the Home Office interpreter confusing the words 'east' and 'west'. Further, in his report at paragraphs 94-99, Mr Verney explores with the Respondent the allegation that the Respondent had shown a lack of knowledge of journey times from his village to a place named ForoBoranga, and from there, to Geneina. Mr Verney asserts that an apparent error by the Respondent as to these journey times 'seems to have been a slip of the tongue'. However, the supposition that the Respondent may have engaged in a 'slip of the tongue' does not, it seems to me, represent expert opinion.

22 In the section of Mr Verney's report entitled 'Attacks on village' at his paragraphs 156-159, Mr Verney appears to be addressing paragraph 59 of the decision letter. He provides as follows:

> "156. The HO letter seems to be mixing up the two attacks on his village, I note.
>
> 157. You told me there were two attacks, is that right? I asked.
>
> 158. Yes, he said. The first time they were searching for weapons, and did not find anything. The second time they were burning and destroying.
>
> 159. It seems highly likely that he was not properly understood in the HO interviews, because his Sudanese Darfuri is very different from the Iraqi Arabic of his interpreter."

23 However, there is no finding in the judge's decision as to whether the Respondent did indeed have problems understanding the Home Office interpreter during the SEF interview as alleged.

24 Further, Mr Verney does not appear to address at this part of this report the other concerns of the Appellant set out in paragraphs 60-61 of the decision letter regarding other alleged inconsistencies regarding the timing and events of the two attacks. Further, although at paragraph 160 of his report, Mr Verney purports to address issues raised at paragraph '62' of the decision letter, the issues discussed therein (the Respondent's journey to Hilat Taiba village) is a matter actually raised at paragraph 63 of the decision letter, not 62. I cannot therefore see anything within Mr Verney's

report seeking to address the issues actually raised at paragraph 62 of the decision letter, which relates to alleged discrepancies regarding the fate of the Respondent's father; a fairly serious matter, one might have thought.

25 Further, the issues set out at paragraphs 63 -65 of the decision (summarised at paragraph 4 above) are barely touched upon by Mr Verney, and his observations at paragraphs 160-163 do not in any event represent expert opinion in my view; merely the recitation of some further information given by the Respondent.

26 In making the observations I have above, I am not seeking to draw into question the standing of Mr Verney as an expert; merely the limitations of specific paragraphs of this particular report.

27 Even if Mr Verney's report was capable of being given weight in certain respects, the carte blanche adoption by the judge of the opinion of Mr Verney did not excuse the judge for performing his task to resolve certain issues in dispute between the parties. I find that the issues raised at paragraphs 59-65 of the appellant's decision letter are not adequately determined by the judge in the appeal. For that reason, I find that the judge's decision contained a material error of law which was to fail to resolve issues in dispute.

28 Going forwards, the issue likely to be key in this appeal is the Respondent's nationality. I find that the dispute over the Respondent's nationality was not limited to issues of knowledge of geography and non-Arab Darfuri customs. Rather, the credibility of the Respondent's account overall was also a factor relevant to the question of his nationality. Therefore, the judge's error in failing to resolve matters in dispute in the appeal relating to the Respondent's account, was material to the question of the Respondent's nationality.

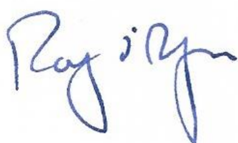
29 It is therefore necessary for the credibility of the Respondent's account to be revisited afresh, including a determination of his nationality. The judge's decision is set aside with no findings of fact retained. Due to the extent of the findings of fact which will need to made in this appeal, it shall be remitted to the First tier Tribunal, and the Tribunal shall then take into account relevant published Country Guidance.

Notice of Decision

The decision contained an error of law which was material to the outcome of the appeal and the decision is set aside.

The appeal is remitted to the First tier Tribunal.

Signed Date: 23.9.19

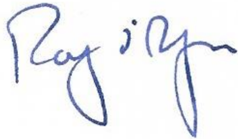


Deputy Upper Tribunal Judge O'Ryan

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 his 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 Date: 23.9.19



Deputy Upper Tribunal Judge O'Ryan