Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05389/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 3 December 2019	**On 18 December 2019**

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

A A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Howard, Fountain Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Ali who, following a hearing at Manchester on 17 July 2019, dismissed the appellant's protection appeal. Permission to appeal was granted by the First-tier Tribunal on 21 October 2019.

2. The respondent's decision which generated the appeal before Judge Ali was not the first that the respondent had taken in respect of the appellant. He had previously made a claim to international protection as a member of the Berti Tribe in Sudan. He

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contended that he was a non-Arab Dafuri person and as such at real risk of serious harm if returned to Sudan.

3. The appellant's appeal had come before Judge Birrell in 2016. Judge Birrell made a number of trenchant findings in respect of the appellant. These are recorded at paragraph 14 of Judge Ali's decision. They included that the appellant was not a member of the Berti Tribe; he is not a non-Arab Dafuri person; and that little weight could be given to an expert report put forward on behalf of the appellant.

4. Judge Birrell found appellant's own witness evidence to be vague and not supportive of his claim. Little weight was given to a letter from an organisation called the Berti and Tunjour Community UK because the author did not attend the hearing to give evidence and there were no written records of the interview that the letter's author said he had with the appellant.

5. The appellant had, further, been discrepant in respect of his evidence regarding alleged detention in Sudan and how he had been able to escape. He had also failed to claim asylum in Italy and France, which the judge considered damaged his credibility. Judge Birrell was not satisfied the appellant had told her the truth about his identity.

6. Further material had been submitted to the respondent by the appellant, subsequent to Judge Birrell's decision. We see this set out in paragraph 4 of the respondent's decision of 16 May 2019. The respondent went through the material and gave reasons why she concluded that it was not such as, taken in the round with the remainder of the evidence and the findings of Judge Birrell, as to give rise to a well-founded fear of harm on return to Sudan.

7. That, then, was the background to Judge Ali's decision. Beginning at paragraph 24 Judge Ali made findings of fact. He said that his starting position, pursuant to Devaseelan, were the findings made by Judge Birrell in the previous appeal. But, he stated in terms that those were not his only considerations. He reminded himself that they were only the starting point and that he needed to assess the appellant's appeal as it was before him. That important statement by Judge Ali serves to shed light on the findings that followed.

8. At paragraph 25, Judge Ali concluded that it was the appellant's *sur place* activities in the United Kingdom that were at the heart of the appeal. Mr Howard criticises this, in that it is apparent from the respondent's decision that there was more to the new documentation than merely evidence relating to *sur place* activities. That is true.

9. At paragraph 26, Judge Ali concluded that the appellant was not a genuine political activist and that his purpose in producing photographs of him attending various demonstrations in the United Kingdom was "simply an attempt to fabricate and embellish his sur place claim".

10. Paragraph 27 sets out the evidence of the attendance at demonstrations. The judge, however, noted that the appellant was unable to mention the dates for any of the

demonstrations that he had attended. A letter from the Union of the People of Darfur in the UK and Northern Ireland had contended that the appellant had organised demonstrations. However, when asked about this in cross-examination, the appellant said that he had helped the community organise demonstrations but was unable to give any information about his specific role, despite being asked. The appellant was also asked about filming of the demonstrations. He confirmed that a friend had filmed the demonstration but that this had not been distributed on the internet and no video was submitted as part of the appellant's evidence. Nor had the photographs been shared with anyone else, according to the appellant.

11. At paragraph 29, the judge found that the appellant had failed to produce any witnesses from any community groups to confirm his involvement in organising demonstrations. The judge concluded that this undermined his claim that he was responsible for organising demonstrations.

12. At paragraph 30, the judge said that, apart from the photographs of the appellant's attendance, he did not produce any further evidence of his *sur place* political activities. The judge concluded that the appellant had simply attended the demonstrations in order, in his words, "to fabricate his claim that he has been involved in sur place political activities in the UK".

13. At paragraph 31, the judge said this:-

> "I accept Mr Hall's submission that if the appellant's attendance at the demonstrations has not been circulated or shared on the internet then the Sudanese authorities are unlikely to be aware of his activities and so this will not place him at risk on return to Sudan."

14. Beginning at paragraph 32, the judge dealt with various letters produced on behalf of the appellant. These included letters from the JEM movement, the Berti & Tunjour Community UK, and from the Union of the People of Darfur in the UK and Northern Ireland. The judge examined these letters in detail. He placed little weight upon them. Part of the reason for this was that none of the authors of the letters had come to give oral evidence on behalf of the appellant.

15. So far as the letter from the Union of the People of Darfur in the UK and Northern Ireland was concerned, the judge noted that Mr Dawelbite, who was the author of the letter, had concluded on the basis of what the judge said were nine questions in total and a very short interview, that the appellant was a member of the Berti Tribe. There was, however, no evidence that Mr Dawelbite was qualified to be an expert in assessing a person's ethnicity or nationality. In any event, the judge did not accept an interview comprising nine basic questions as sufficient to assess that the appellant was from the Berti Tribe. The appellant said that no one had asked him to produce witnesses to speak to the letters. The judge did not consider that explanation to be credible, particularly as the appellant had been legally represented throughout the proceedings.

16. At paragraph 37, the judge looked at various letters said to emanate from Sudan, including a letter from a lawyer and various documents said to emanate from the authorities and to show that the appellant was a wanted person in Sudan. The judge observed he had not been shown the original documents, only copies. The judge had already explained why he found the appellant's account to incredible; but, looking at the documents and applying the guidance in Tanveer Ahmed, he attached little weight to them.

17. In conclusion, the judge found that the appellant had fabricated an account in order to bolster his asylum claim. The judge found no reason, in his words, to depart from the findings of Judge Birrell.

18. The grounds of application for permission to appeal were not drafted by Mr Howard, who appears on behalf of the appellant. Ground 1 was that the judge provided inadequate reasons for finding that the appellant's account was not credible; that the judge failed to identify at paragraph 25 all the core matters engaged in the appeal; that the judge provided inadequate reasons for finding the appellant was not a genuine political activist; and that the judge had also provided inadequate reasons for attaching little weight to the appellant's supportive documents. All this comes under the heading of "Irrational material findings of fact".

19. Ground 2 related to Article 8 and paragraph 276ADE of the Immigration Rules. The ground contended that the judge had erred in law by failing to make findings as to why the appellant's human rights claim under paragraph 276ADE(1)(vi) was not made out. The judge had failed to explain why the Rules were not satisfied in the appellant's case and why there would not, in fact, be very significant obstacles to his reintegration in Sudan. The judge had also, according to the grounds, failed to give adequate reasons as to why the appellant's claim under Article 8 of the ECHR outside the Immigration Rules was not satisfied.

20. Finally, under ground 3, the judge was said to have erred in law in failing to make findings on the risk to the appellant as a failed asylum seeker.

21. Although the First-tier Tribunal granted permission to appeal in relation to grounds 1 and 3, the granting judge considered that Judge Ali, having made detailed findings regarding the appellant's involvement in activities in the UK, was entitled to rely on the previous decision of Judge Birrell. The granting judge was therefore "less persuaded" of grounds 1 and 3. However, what troubled the granting judge was that the appellant had -

> "submitted an Article 8 private life claim. This was considered in the refusal letter. It was also included in the grounds of appeal. No reference was made to the appellant's private life claim during the hearing although counsel did refer to adopting his skeleton which included brief references to the appellant's private life in the UK. The appellant also adopted his witness statement which included his claim to have private life in the UK. This was not dealt with by the Judge and this amounts to an arguable error of law."

22. Taking the grounds in turn, despite Mr Howard's able submissions I am unable to accept any of them, even as elaborated by him.

23. The judge was entitled at paragraph 25 to identify what he considered to be the central aspects of the appeal advanced by the appellant, namely his *sur place* activities. It is clear from my previous description of the judge's findings, however, that the judge dealt with all other material matters, and did so by giving adequate reasons for his conclusions.

24. The judge was, in particular, entitled to regard Judge Birrell's findings as the starting point. Indeed, the judge would have been rightly criticised for not doing so, having regard to the Devaseelan principles, which have been approved on a number of occasions by the higher courts. Judge Birrell's conclusion was, in terms, that the appellant is not a member of the Berti Tribe. Having gone through the material in some detail and having reminded himself at paragraph 24 that the findings were for him to make rather than simply to rely on the decision of Judge Birrell, Judge Ali stated in terms at paragraph 38 of the decision that he saw no reason to depart from Judge Birrell's findings. All of this, the judge was entitled to do.

25. Criticism is made of Judge Ali's treatment of the various letters of support. However, the judge was entitled to regard it as significant that none of the writers of these letters had come to give evidence. The appellant had no reasonable explanation to give for this failure. So far as the letter written by Mr Dawelbite is concerned, it is indeed extremely short. The questions and answers, which are to be found at page 99 of the consolidated bundle, tell us nothing about the circumstances in which the interview was undertaken. That, in itself, seems to be a legitimate cause for concern.

26. In any event, as Mr McVeety points out, Judge Ali gave us a further reason for placing no material weight on the letter; namely, the fact that there was no indication that Mr Dawelbite was qualified to be an expert. Mr Howard points to him as being the Secretary General of the Darfur Union in the UK and North Ireland, as it is described. However, we know little or nothing about this organisation; including whether being the Secretary General, whatever that might mean, makes the writer qualified to opine on ethnicity.

27. The fact that there may have been an additional letter in the bundle, to which specific reference was not made to by the judge, is of no significance. It is trite law that a judge is not required to refer expressly to each and every item of evidence. Nothing has been shown to suggest that there was any qualitative difference between this letter, compared with the others that the judge did specifically refer to in the decision.

28. The issue of the *sur place* activities was also correctly dealt with by Judge Ali. The judge noted that no relevant posting of any photographic material relating to the activities had been made. I am satisfied that, at paragraph 31, the judge dealt adequately with the so-called Danian principle; that is to say the principle whereby

even cynically undertaken *sur place* activities may, in certain circumstances, give rise to a real risk on return. The judge's conclusion was that there was nothing to show that any of this material, linking the appellant to what was no more mere presence at demonstrations, was reasonably likely to have found its way to the Sudanese authorities. I say that, having regard to the objective evidence contained in the consolidated bundle. It is clear that failed asylum seekers may be questioned on return to Sudan, even in the present somewhat changed situation in which that country finds itself. There is, however, in my view, having looked at this material, nothing to show it is reasonably likely that somebody of this appellant's profile would be questioned in such a way that he would be likely to reveal his presence at anti-government demonstrations in the United Kingdom. There is, accordingly, no issue of the appellant being required to lie about matters of that kind. For these reasons, rather like the judge who granted permission, I do not find any error in the conclusions of Judge Ali, leaving aside Article 8.

29. It is now necessary to turn to that Article. In the light of the judge's findings about the appellant's international protection claim, it cannot in my view rationally be contended that the judge was wrong in failing to find that paragraph 276ADE meant there would be very significant obstacles to the appellant returning to Sudan. He had only relatively recently come from that country. There is no indication that he has lost his understanding of the culture and languages of Sudan.

30. What troubled the granting judge, however, was that there had been, according to that judge, some Article 8 private life claim that compelled attention, with which Judge Ali had failed to deal. It is true that the decision of the respondent had analysed private life. It had done so, however, in terms of paragraph 276ADE, before going on to look at whether there would be very significant obstacles to integration. For the reasons I have just articulated, the respondent concluded that there would not. There was then an analysis at paragraph 57 of the respondent's decision on exceptional circumstances. It was found there that the appellant had provided no information or evidence to show that there were any such circumstances.

31. The grounds of appeal to the First-tier Tribunal against the respondent's decision merely say this in respect of human rights: "*Articles 2+3+8 of the ECHR will be violated should the Appellant be forced to leave the UK*". So far as Article 8 is concerned, nothing more is said.

32. What appears to be the thrust of the case which found favour with the granting judge is, therefore, no more than that this appellant, who came to the United Kingdom relatively recently, has a private life which commands respect, to the point at which the respondent cannot remove him, compatibly with Article 8. But there is no such private life of that character. The appellant, like anyone else, has no doubt friends; he may, indeed, have friends in the communities that are described in the bundle and, particularly, friends who are members of the Berti Tribe, as well as other Sudanese friends in the United Kingdom. But that, with respect, is no reason at all to allow the decision of Judge Ali to be overturned. Indeed, had Judge Ali made a finding on what was before him that the appellant's private life was of such a

character as to defeat the respondent's requirements to comply with immigration control, that finding would, undoubtedly, have been challenged by the respondent on rationality grounds; and rightly so.

33. For these reasons, this appeal is dismissed.

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: 13 December 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber