



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00487/2020

THE IMMIGRATION ACTS

Determined at Field House Without a Hearing
On 25 November 2020

Decision & Reasons Promulgated
On 14 January 2021

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Barker, promulgated on 4 August 2020, dismissing his appeal against the decision of the respondent made on 2 January 2020 to refuse his asylum and protection claim.
2. The appellant's case is that he faces persecution on return to Sudan as he is a member of the Berti black African Darfuri tribe. It is also his case that he faces persecution due to his anti-Sudanese government political involvement both in Sudan and the United Kingdom, including active involvement with JEM. He also states that his removal to Sudan would be in breach of Article 3 of the Human Rights Convention given that he suffers from PTSD and epilepsy for which he receives treatment in the United Kingdom.

3. Although accepting that the appellant is a national of Sudan, the respondent rejected the remainder of his claim, relying to a significant extent on an earlier decision of First-tier Tribunal Judge Holmes, promulgated on 8 June 2015. The respondent did not accept either that his health claim had reached the high threshold of severity to engage Article 3.
4. The judge heard evidence from the appellant and a witness, MESK. She also had before her expert reports from John Birchall, and a consultant neurologist Holger Allroggen. She also had evidence in the form of a letter from Mr Sediq Hamad, chairperson of Darfur Union UK and N Ireland, this only being a photocopy.
5. The judge did not accept that the appellant was a member of the Berti tribe nor was she satisfied that he was involved with JEM or that he would be at risk on return to Sudan. She did not accept either that the appellant's medical conditions were such as to engage Article 3 as he had not demonstrated he suffered from any medical conditions that were of a type of severity that could not be treated in Sudan.
6. The appellant sought permission to appeal on several grounds. It is averred that the judge had erred:-
 - (i) in identifying the wrong country of Iraq when the appellant is a national of Sudan at paragraphs 39 to 40;
 - (ii) in rejecting a request for an adjournment;
 - (iii) in not properly applying **Paposhvili v Belgium**;
 - (iv) in not addressing the findings of the expert as to the current medical facilities in Sudan which were inadequate to deal with the appellant's medical problems;
 - (v) in disregarding the evidence of the witness MESK who confirmed that he is of the Berti tribe and had known the appellant in 2011, simply stating the witness did not know whether the appellant was still in contact with his wife, this being an insufficient basis to reject his evidence;
 - (vi) in failing to make her own independent credibility findings, merely seeking to rely on the findings of Judge Holmes.
7. On 22 September 2020 Upper Tribunal Judge Lindsley granted permission on limited grounds. Judge Lindsley considered that the judge had directed herself properly in respect of the previous decision of the First-tier Tribunal and that the refusal of an adjournment was justified. She considered that the error in naming the appellant's country as Iraq was not a material error, as in all other points the judge had understood that the appellant is from Sudan nor was it arguable that there are any errors in relation to the treatment of the expert report of Mr Birchall as there was no medical evidence which goes to the impact of the appellant returning to a place with limited or no treatment and so the report could not affect the outcome.

8. Judge Lindsley did, however, consider it was arguable that the reasoning for dismissing the evidence of MESK was insufficient as it is arguable the evidence was not vague, lacking in detail or contradictory, contrary to what was stated in paragraph 65 of the decision. She also considered it arguable that the treatment of the medical evidence was incorrect; the fact that the evidence of the consultant neurologist was in the form of a letter, not a report was not a reason not to give it weight and whilst it was not arguable that the medical evidence which showed that there would be an Article 3 risk on return to Sudan, it is arguable that the evidence of PTSD ought to have been considered properly in relation to the credibility of the appellant's protection claim.
9. Judge Lindsley then gave directions stating that in her provisional view it would be appropriate to determine whether the making of the First-tier Tribunal's decision involved the making of an error of law and if so whether it should be set aside without the need for a hearing. She then gave a timetable for submissions and objections to be made.
10. On 26 October 2020 the respondent wrote to the Upper Tribunal stating:

Having reviewed this case we consider that the matters identified by UTJ Lindsley at [6] of her decision on the appellant's application for permission to appeal reveal material errors in First-tier Tribunal Judge Barker's consideration and application of the medical evidence about the appellant's PTSD. Consequently, we invite the Upper Tribunal to set aside the FtTJ's decision. Given that there would need to be a de novo hearing with substantial findings of fact required, we respectfully suggest the remittal of this appeal to a differently constituted FtT.
11. In deciding whether to proceed without a hearing I note the provisions of the directions given and of the amended presidential guidance note referred to in Fordham J's decision in, **JCWI v the President of the Upper Tribunal [2020] EWHC 3103** and the order set out in that decision. I bear in mind that the appellant has been legally represented throughout and has made no objection to this matter being decided without a hearing. I note further that the grounds of appeal conclude as follows:-

It is respectfully submitted that there are arguable errors of law and that this matter should be remitted to the First-tier Tribunal for a remittal hearing, in the alternative permission should kindly be granted and proceed to an Upper Tribunal oral hearing as there are arguable material errors of law.
12. In light of the concession made by the respondent and bearing in mind the overriding objective of the Procedural Rules I am satisfied on the particular facts of this case that it would be proper to proceed to determine this appeal without the need for a hearing.
13. Given the concession by the Secretary of State that the judge failed properly to assess the evidence relating to the appellant's PTSD which is relevant to his credibility I am

satisfied that for the reasons set out in full in the grounds, and as identified by Judge Lindsley in her grant of permission that the findings with regard to credibility are not sustainable. It therefore follows that on that basis alone the decision falls to be set aside as it involved the making of a material error of law.

14. Further, I am satisfied also that the judge's approach to the evidence of MESK was also flawed, again for the reasons identified in the grounds and by Judge Lindsley in her grant of permission. In the circumstances, despite the fact that the judge properly relied to a significant extent on the findings of Judge Holmes in an earlier appeal, I conclude that the decision did involve the making of a material error of law and it will not be possible to preserve the findings of fact reached by Judge Baker. These, particularly the evidence of Mesk are material and accordingly, I am satisfied the decision must be set aside.
15. I am not, however, persuaded that, given the history of this case, given the limited nature of the grounds and the previous case that it would be appropriate to remit the appeal to the First-tier Tribunal.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) The appeal will be remade in the First-tier Tribunal on a date to be fixed.

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 their 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 1 December 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul