Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07691/2016**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	**Decision & Reasons Promulgated**
On 22 September 2021	**On 14 October 2021**

Before

UT JUDGE MACLEMAN

Between

AMADOU [S]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Caskie, Advocate, instructed by A J Bradley & Co, Solicitors
For the Respondent: Mr Kotos, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant says that he was born in Mauritania on 28 November 1998. His asylum claim in the UK was refused and his appeal was dismissed in 2012. In 2013 he made further representations, based on the report of an expert that as a black Mauritanian he would suffer discrimination, would be unable to obtain a National Identity Card, and would effectively be stateless. After various procedure, the SSHD refused those representations by an appealable decision dated 13 June 2016.

2. FtT Judge Gillespie dismissed the appellant's appeal by a decision promulgated on 28 June 2017.

3. The appellant sought permission to appeal, on the grounds that the FtT erred in its treatment of expert reports and made unclear or inadequate findings on the "deprivation of citizenship" issue.

4. The FtT and the UT refused permission.

5. The appellant petitioned the Court of Session for reduction of the UT's refusal of permission. Parties entered into a joint minute:

> … parties are agreed that FtT Judge Gillespie erred in his treatment of the expert evidence by mis-quoting the report at [40] of the FtT's decision. Accordingly, the UT erred in … refusing permission …
>
> While not agreed between the parties the [appellant] insists on each of his grounds of appeal…

6. On 4 March 2021, the Vice President of the UT granted permission in light of the joint minute, and of the Court's interlocutor, following thereon.

7. At a hearing on 23 June 2021 Mr Diwyncz, for the respondent, conceded that the error specified in the joint minute required the decision of the FtT to be set aside. The appellant did not seek re-hearing of oral evidence. Parties agreed that the case was apt for fresh decision following on submissions to be made at a further hearing.

8. It was indicated that it would be useful if parties were to agree on a joint inventory / bundle; but in any event, parties were directed to provide, not less than 7 days before the next hearing, all relevant materials, old and new, prepared in accordance with Practice Directions and with the "standard directions" issued along with the notice of hearing.

9. The appellant has provided an updated bundle, including a report by Professor E Ann McDougall of the University of Alberta, dated 21 June 2021, supplementing her reports dated 2 December 2013 and 24 February 2017.

10. I am obliged to Mr Kotos and to Mr Caskie for their pertinent submissions, having heard which, I reserved my decision.

11. Neither party has produced the determination from proceedings in 2012. It is not disputed, however, that the appellant was found to be a less than reliable witness on his specific allegations about his and his family's past. It is also not disputed that he is a black Mauritanian. That part of the population suffers at least from discrimination. The main issue is whether the appellant faces anything which rises to the level of persecution.

12. Mr Kotos submitted that this is not a case about statelessness, but about "redocumentation". Mr Caskie clarified that the appellant does not claim to be legally stateless.

13. Professor McDougall does not distinguish between legal and "effective" statelessness, but that is hardly surprising. She is a country not a legal expert. It is the likely practical outcome of return which is relevant. The distinction is valid, but it does not affect the outcome.

14. Mr Kotos further submitted that a comparison could be drawn with Iraq, and that any problem is merely bureaucratic, not persecutory.

15. The evidence goes beyond that. Non-availability of documentation is a major problem for black Mauritanians, rather than for others. That is not an accident. Legal redress is only theoretical.

16. Mr Kotos suggested that the evidence was historic, as mass expulsions of black Mauritanians date back to 1989 – 1991. There is no evidence of such expulsions since then, but Mr Caskie drew attention to the latest information which is that those who returned in the years after 2000 were, despite promises, still without documentation and at major disadvantage years afterwards.

17. Professor McDougall in her latest update considers there to have been no significant improvement.

18. Mr Kotos said that there is a Mauritanian Embassy in London, and no evidence that the appellant has tried to document himself. There is some force in that, in principle. Refuge is not justified where recourse to national authorities is available, but an appellant refuse to exercise it. Further, while neither representative mentioned this point, return presupposes documentation; which further suggests that the appellant would be likely to retain some form of documentation after he arrives.

19. Those considerations are relevant, but the question remains whether, on all the evidence, the appellant would be able to document himself if returned, and whether absence of documentation, and other difficulties, reach the necessary level.

20. The respondent's refusal letter of 13 June 2016, rejecting further submissions of 13 December 2013, accepts at [17] that Professor McDougall has "considerable knowledge and experience" in her subject area, but says that despite this opinion "being based on professional knowledge, it remains an opinion and does not carry significant weight and therefore does not support your claim that your fear of statelessness is well founded". That passage includes no reason for giving the opinion less than significant weight.

21. The refusal letter goes on at [22] to hold that the appellant might experience "discrimination and difficulty during the process of application" but not that he would be unable to obtain identification. I do not find that to be fair reflection of the expert and background evidence, which is that documentation is very difficult or near impossible for many black

Mauritanians, if not deliberately withheld, and that remedies are theoretical and ineffective.

22. Mr Kotos suggested that the problem was excessive bureaucracy, not directed against one sector of the population, but the evidence and expert opinion is clear on the country being run for the benefit of the dominant Arab minority and to the detriment of the black majority, a large part of which is of recent descent from slavery. (Slavery was legally abolished in 1981, but criminalised only in 2007, with one prosecution since. Although officially denied, it is widely reported to persist.)

23. Mr Kotos suggested that the evidence should be read as showing that even if secondary education was denied to black Mauritanians, that showed that primary education was available; that lack of access to all government benefits showed access at least to some; that there appeared to be no barriers to working or to marriage; and that legal remedies appeared to be available in respect of non-documentation.

24. Those appear to me to be optimistic readings. The evidence is that black Mauritians are much worse off in terms of education, health care, employment opportunities, derivation of land they formerly cultivated and to which they claim title, and so on. In general, I prefer the opinion of Professor McDougall, based on the evidence she cites. I see no reason not to accept her reports.

25. I find it much more likely than not that the appellant would be unable to obtain identification from the Mauritanian authorities.

26. The fact that his specific claims may previously have fallen short of probation is inconsequential. Mr Kotos did not suggest that the case turned on any deficit in credibility.

27. For a black Mauritanian without identity documents, the disadvantages and discrimination likely to be experienced cross the threshold into persecution.

28. Those matters amount to very significant obstacles to the appellant's integration in Mauritania.

29. The appeal is therefore allowed both on Refugee Convention and on human rights grounds.

30. No anonymity direction has been requested or made.

Hugh Macleman

24 September 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.