



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004027

First-tier Tribunal Nos: PA/54220/2022
IA/10222/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

H I
(ANONYMITY ORDER MADE)

Appellant

v

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Miss E Rutherford of Counsel, Rodman Pearce Solicitors
For the Respondent: Mr N Wain, Home Office Presenting Officer

Heard at Field House on 27 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Chad from the Mararit tribe, born on 8 May 2004. When the Appellant was about 12 years of age, his father was killed over a land dispute by members of Zaghawa tribe, as a result of which the Appellant fled Chad, ultimately arriving in the United Kingdom in March 2020 and he made an asylum claim on 3 July 2020. This application was refused by the SSHD on 30 September 2022 and an appeal was lodged against this decision on 10 October 2022.
2. The appeal came before First-tier Tribunal Judge Parkes for hearing on the 4 August 2023 in Birmingham. In a decision and reasons promulgated on 14 August 2023, the judge dismissed the appeal, on the basis that the evidence did not show that the Appellant would be at risk of persecution in Chad on account of his tribal origin and there was no evidence to show that he had developed a private and family life that engaged article 8(1) of ECHR.
3. An application for permission to appeal against that decision was made, in time, on the basis that:
 - (i) the judge acted in a manner that was procedurally unfair in that if there was concern about how the Appellant and his brother managed to flee when their father was killed, the Appellant should have been given the opportunity to address these concerns, however, they were not raised in the refusal letter, cross-examination or submissions; and
 - (ii) the judge materially erred at [20], [21] and [23] of his decision in failing to take account of material and relevant evidence, in particular the expert report and the judge misinterpreted [40] of the refusal decision.
 - (iii) the judge erred in relation to the whereabouts of the Appellant's mother in Chad and in reaching a conclusion contrary to the expert evidence, i.e. a report of Dr Hassan Hafidh, without providing reasons and in making the finding that the Appellant could internally relocate again without engaging with the expert evidence.
4. Permission to appeal was granted by First-tier Tribunal Judge Hollings-Tennant on 15 September 2023 in *inter alia* the following terms:
 - “2. The grounds assert that the Judge erred by rejecting the Appellant's claim primarily on a point not raised by the Respondent or put to him during the hearing. It is argued that he ought to have been given an opportunity to address the issue. It is clear that the Judge considered the lack of clarity as to how the Appellant was able to escape when his father was killed to be a significant factor in finding the account was not credible. It seems to me that, in the interests of fairness, the Appellant ought to have been given the opportunity to provide an explanation if the point was to be taken against him.
 3. The grounds also assert that the Judge failed to take into account expert evidence relating to land disputes arising in the Appellant's home state and reached conclusions as to risk that run counter to expert evidence without giving reasons. There is some merit in these assertions. In his report, Dr Hafidh does refer to tribal conflict between

the Mararit and Zaghawa tribes in the Ouaddai region over access to land. It is at least arguable that the Judge failed to give appropriate weight to the expert evidence before finding that there was no risk on return. Further, it does not follow that the Appellant's mother is safe and well in Chad by virtue of information obtained from a third party in France in 2021, particularly as the Appellant's evidence is he is not in contact with her."

5. In her submissions, Ms Rutherford adopted her grounds of appeal. She confirmed that the first point as to the ability of the Appellant and his brother to flee was not a matter raised in the refusal decision, nor in the interview record, cross-examination or submissions. She submitted that if the Judge considered it to be a significant point, the Appellant should have been given the opportunity to respond.
6. In relation to contact with his mother, the Appellant stated that he and his brother were male and his mother is female and that is why they, rather than she, needed to flee; that he has not had direct contact with his mother, he has no information as to any difficulties she might have and has not been able to speak to her directly. In relation to the judge's finding as to the fact that issues in relation to land are not common in the Appellant's area but are more common in the south of the country, Ms Rutherford submitted that this is not a fair reflection of the expert's evidence. The expert sets out difficulties between the Appellant's tribe and the Zaghawa at [9] to [11] of his report. Whilst the judge was not obliged to accept the expert's opinions, as set out in the report, he did need to give reasons for not accepting the expert's views.
7. In relation to risk on return, the expert addressed this in his report but the judge does not deal with this point at [23], finding that the Appellant was subjected to discrimination rather than persecution and would not be at risk in his home area. In relation to internal relocation, this was addressed by the expert in his report as to whether the Appellant could internally relocate to the capital at [49] to [51] of the expert's report, however, this was not addressed by the judge in his decision at [23] and he needed to deal with the expert's conclusions. For those reasons, Ms Rutherford submitted that there were material errors of law in the judge's decision and reasons.
8. In his submissions, Mr Wain submitted that in relation to the fairness point, the judge noted at [18] that there were minor differences between the witness statement and what the Appellant said at interview but did not draw an adverse inference. The judge did draw an adverse inference at [19] where he stated as follows:

"19. The Zaghawa, being significantly connected with the authorities and able to act with impunity, are portrayed in the report as ruthless and willing to kill in order to cement their hold on land and demonstrate their power. It is not clear why, with that background, the Appellant and his brother would have remained unharmed having witnessed his father's murder with the Appellant having the possibility of continuing the dispute with the tribe. The ability of the Appellant and his brother to run away is not consistent with the possession of guns, the willingness to use them and the ability to run away unscathed and not pursued."

9. Mr Wain submitted that this was not a matter that the Appellant could in any event comment on because the judge there was comparing the Appellant's evidence with what the background evidence stated. As to the location of tribal disputes, the Appellant's home area is located in the mid-east of the country whereas the judge found that the activity was more in the south of the country, stating as follows at [20]:

"20. The Secretary of State relied on evidence suggesting that the issues over land and the violence associated with such disputes were not prevalent in the Appellant's area being more to the south. The report submitted did not deal with this issue directly or provide evidence to show that the Respondent's position was erroneous. It may be that there is violence relating to land disputes in the Appellant's area but at a lower rate of incidence than elsewhere, that is still subject to the observations about the abilities and actions of the Zaghawa noted above."

10. At that point, I invited the parties to consider the map which shows that the Ouaddai region, where the Appellant is from, is in the southeast of the country. Mr Wain continued to rely on [14] of the judge's decision, which summarises the expert report and provides:

"Paragraph 9 gives some history of issues in the Ouaddai region and recounts an incident in September 2021 where 21 villagers were killed, it is not stated what tribes were involved. There being other tribes in the area, the Fulani being one, it appears that there is wider issue between differing groups of which the Mararit and Zaghawa are two, albeit that the Zaghawa is more powerful. Apparently the Mararit have been portrayed as rebels and adversaries to the state. Paragraph 13 concludes that a member of the Mararit tribe would "conceivably be at risk of violence and harm from the Zaghawa tribe due to the motives the Zaghawa have to harm Ouaddaian tribal members and the vulnerability of the Mararit tribe in the first place."

11. Mr Wain further sought to rely on the judge's findings at [16] and [23]:

"16. The Zaghawa do carry out attacks on civilians given the role of the tribe in government. The report also refers to the current political instability following the death of the last elected president shortly after winning the vote. There remains a military government and there have been significant incidents which are set out. Concerning internal relocation, paragraphs 52 and 53 at page 69, in the opinion of the Dr, given the reach and connections of the Zaghawa, that would not be a viable option of some of adverse interest to them. Similarly there would not be adequate protection for someone involved in a land dispute with them."

"23. The Appellant's report suggested that there is a general danger to members of the Mararit tribe from the Zaghawa in Chad. There is no evidence of an internal armed conflict that would give rise to an issue under article 15(c). That the Mararit may be subject to discrimination, along with other tribal groups in a similar situation, does not amount to there being a risk of persecution. The evidence does not show that simply by virtue of his tribal origin the Appellant would be at risk of persecution in Chad, whether in his home area or otherwise. The

Appellant's mother remains in Chad and he can return to his home area or relocate to a city and follow a non-agricultural employment."

12. In relation to the Appellant's mother, Mr Wain submitted that the judge had considered her circumstances at [11]:

"11. In evidence the Appellant confirmed that in 2021 a friend had told him, via another person, that the Appellant's mother was ok. The friend was from the same area in Chad but they had not met before with the Appellant living in the outback, meeting for the first time in France although they speak the same native language. Asked if his friend had given him the contact details for the Appellant's mother he replied that they do not have mobile phones."

13. In reply, Ms Rutherford submitted in relation to the first ground of challenge that it was not simply a point of the Appellant commenting upon his ability to escape but how he was actually able to that. This was a matter upon which he would be able to give evidence as to what specifically happened to him. Ms Rutherford submitted that the judge does set out extracts from the expert report but failed to reach conclusions upon it and he needed to give some reasons as to why he preferred the evidence emanating from the Home Office over that of the expert.
14. I found material errors of law in the decision and reasons of the First-tier Tribunal Judge for the reasons set out in the grounds of appeal. I now give my particularised reasons for that conclusion.

Decision and reasons

15. At [17]-[22] the Judge made a number of findings adverse to the Appellant *viz* his and his brother's ability to escape, given that the Zaghawa tribe members were armed and killed his father, consequently he did not accept that the Appellant's father had been attacked and killed as described or that the Appellant is of interest to the Zaghawa tribe as claimed; that it was not clear why the Appellant's mother was not in danger from the Zaghawa tribe and that the SSHD relied on evidence suggesting that issues over land and violence associated with such disputes were not prevalent in the Appellant's area, which was more to the south and this was not addressed directly by the expert report.
16. I accept Ms Rutherford's submissions that these findings contain material errors of law. With regard to the first ground of challenge, the ability of the Appellant to escape from armed Zaghawa tribe members who attacked his father was not an issue raised in the SSHD's refusal of his claim, nor was it raised by the Presenting Officer in cross-examination or submissions nor by Judge during the course of the hearing. I consider that this is a matter in respect of which the Appellant could and should have been given the opportunity to comment on in evidence and the failure to provide him with this opportunity was procedurally unfair.
17. With regard to the differential treatment of the Appellant's mother this was addressed by the Appellant at [11] of his witness statement: *"Furthermore, my mother is a woman. The risk I would face as one of the older male children of my father is higher than the one my mother would be faced with."* The Judge does not appear to have considered this explanation when making his finding at [23] of the decision and reasons.

18. A key plank of the evidence put forward by the Appellant in support of his protection appeal was an expert report by Dr Hasan Hafidh, a Visiting Research Fellow at Kings College London and a senior teaching fellow at SOAS , specialising in Comparative Politics, International Relations and Middle Eastern Studies dated 18 November 2022 at pages 10-31 of the Appellant's bundle. It is clear from the report that the expert found the Appellant, as a member of the Mararit tribe from the Ouaddai region of Chad would conceivably be at risk from members of the Zaghawa tribe [8] refers. The expert explains that this is in part because the Mararit tribe are very small - 1.1.% of the total population and that they lack the backing of the State which the Zaghawa tribe possesses, even though they also only number 1.1.% of the population and because the Mararit are primarily farmers and herders and the land they occupy is becoming increasingly valuable due to the growing climate crisis.
19. Whilst the Judge was not, of course, obliged to accept the findings of the expert, it was incumbent upon him to provide reasons for preferring the evidence of the SSHD, which was not, in any event, particularised at [20] with regard to the area(s) of Chad where land disputes take place, the expert having been clear that the Appellant's home area of Ouaddai being one such area.
20. Having found that the grounds of appeal disclose errors of law in the decision and reasons of the First tier Tribunal I considered whether the appeal could be re-made in the Upper Tribunal, however, given that the first ground of challenge raised a matter of procedural fairness I considered it appropriate to remit the appeal for a re-hearing.

Notice of Decision

20. The decision of the First tier Tribunal Judge is vitiated by errors of law. I set that decision aside and remit the appeal for a hearing *de novo* before the First tier Tribunal sitting in Birmingham.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2023