



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08362/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 20th July 2015

Decision & Reasons Promulgated
On 4th September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MR EDRESS ABDULRAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Madubuije - Solicitor
For the Respondent: Ms C Johnstone - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Edress Abdulrahman, a citizen of Sudan born 31st December 1984. He appeals against the decision of the Respondent made on 29th September 2014 to refuse to grant asylum and to remove him from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999. The

Appellant appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Davies in January 2015. The Appellant appealed against that decision and on 5th May 2015, having heard submissions, I found that there was a material error of law in the determination of the First-tier Tribunal in that the Judge failed to take account of relevant evidence and to consider the evidence before him in the round. I set aside the decision of the First-tier Tribunal and now proceed to remake the decision.

The Basis of the Appellant's Claim for Asylum

2. The Appellant claims to be in opposition to the Sudanese Government. He claims to have demonstrated against the Government's economic legislation in September 2013. He said that he joined the demonstration at 9 o'clock in the morning and at midday the police arrived and dispersed the crowd with tear gas bombs, batons and live ammunition. He ran off and was then stopped by police in a vehicle who beat him and knocked him unconscious. He was arrested and taken to a detention centre where he was detained for a month and tortured every day. He was charged and found guilty without being taken to court then released on 26th October 2013 on condition that he did not leave Sudan or indeed his local area or tell anyone what had happened. He was also to report to the police every two weeks and provide the Sudanese Government with information about the opposition party. He did report to the police and when he did he would be interrogated and threatened. In February 2014 he stopped reporting and went into hiding at his uncle's house in Khartoum. Four months later he left Sudan and went to Egypt with the help of an agent. He arrived in the United Kingdom on 30th June 2014 and claimed asylum on 1st July.

The Decision of the Secretary of State

3. The decision of the Secretary of State is contained in a letter dated 1st October 2014. The Appellant had said that he had studied English language at Omdurman Islamic University having begun this course in September 2008. Essentially the Secretary of State dismissed this claim. She found inconsistencies in his account. He had said that he had only passed his first and second year of studies because he had to resit some years and had financial difficulties which meant he had to have breaks in his studies. The Secretary of State found his claim to be internally inconsistent with his claim that he cannot read or speak the English language and she did not accept that a student who passed their first and second year of a degree does not speak or read English. He had said that the modules that he had studied included "writing, reading, English language skills, literature, grammar and phonetics". The Secretary of State also said that according to the information before her English language is not a course on the syllabus at Omdurman Islamic University. She therefore rejected his claim to have studied there. Having done that she reasonably found it inconsistent that he had joined the student activist community at that university and through that group expressed political opinions in opposition to the Government. She noted too that his last address in Sudan was in Qadarif, not Omdurman. The Secretary of State took into account that the country information shows that there were many protests between September and October 2013 across Sudan against the President's decision in 2012 to stop subsidising fuels and other main commodities. She accepted that this

supports his claim but concluded that because of the fact that these demonstrations were widely reported in the media the Appellant would know about them whether he attended them or not. She also noted discrepancies in his answers at the interview about when the police had intervened giving different times at various stages of his interview. The Secretary of State did not accept that the Appellant was living in Omdurman at the time of the demonstration. She went on to dismiss his claim to have been arrested and ill-treated by the authorities in Sudan. She also took into account the fact that the Appellant did not seek asylum immediately on his arrival in the UK and indeed did not seek asylum in Italy or France.

Evidence at the Hearing

4. A bundle of documents was provided at the hearing.
5. Firstly I have an original certificate from Omdurman Islamic University in the Appellant's name confirming him to have been enrolled in the third year at the Faculty of Arts - English Department - for the academic year 2013/2014. It is dated 20th October 2014 and has various stamps on it including one from the Academic Secretary's Office of the University.
6. I have a statement from the Appellant rebutting the reasons for the refusal of his claim. He said that his home address where his wife also lives is in Qadarif but he moved to Omdurman to study. He was staying with his brother as he did not have a home of his own there. He attended the demonstrations outside his brother's house. He gave approximate times when he joined the demonstration and when the police and security services arrived. It was around midday. He was not a member of any political party but was accused of being a member of the opposition. Four of the subjects at the university were English related. The learning of English is a gradual progression. It was not necessary for him to be able to speak English when he began the course. The standard of English is not the same as it is in England. The letter from the university which he had produced confirming that there is a Faculty of Arts - English Department at the university had been obtained and produced by his brother. He said he was providing a bundle of cards which he was issued with during his time at the university. He explained why he was unable to claim asylum in Italy and France saying that he was on the streets in Italy and it was dangerous. In France the police told him to leave their country within a month. He went to 'the jungle' with other asylum seekers and lived in destitution until he got out of France. He is from the Beni Amer Tribe which is generally marginalised by the Sudanese Government.
7. I have nine cards, some of them laminated. I have translations of them though one is in English. It was issued by the English Cultural Centre with an issue date of 1st July 2013 and an expiry date of 1st July 2013. There is a residential certificate for October 2014, travel passes and library cards issued in December 2009, September 2008, September 2011 and one with no issue date but covering 2013 to 2014.
8. I heard oral evidence from the Appellant. He adopted his statement.

9. Mr Madubuije went through the cards with him. It had been suggested that the photograph on all the cards was the same. I have to say that I do not agree with that. In any event what the Appellant said was that the way the university cards worked was that they took a photograph at the start and used it throughout. It was pointed out to him that some of the student ID cards were different from others. He said that they just changed over the years.
10. Ms Johnstone cross-examined the Appellant at great length on the cards. She asked him for example why he produced a library card that had been valid for ten days only. He said that he had failed an exam and had to do a resit. He was given the card for a limited period to enable him to use the library to study for the resit. He had had to stop his studies for two years and then he repeated a course for two years. He took a refresher course in 2010. He was clearly becoming confused by the questions and I asked him to take his time and try to give us rough dates. He said that in 2008 he did his first year; in 2009 he repeated his first year; in 2010 he stopped for a year; in 2011 he started his second year; in 2012 he repeated his second year and in 2013 he did his third year. He explained why the card numbered (7) says that he was in his second year when according to his evidence he was in his first. He said it was because the year was repeated.
11. Ms Johnstone put it to him that there was tear around the photograph on one of the cards (page 19). He said it was just a mistake by the person who laminated it. It was split. She suggested that the photograph looks as if it had been put into someone else's card. He said it was his name that was on the card and his photo. Similar comment was made with regard to other cards i.e. that he had changed the photo. He denied this saying about one of them that it was not a magnetic card. He would put the photo in and then hand it over to the university to be laminated. She questioned why the English Cultural Centre card was in English but I made it clear immediately that I had no difficulty with that at all. One would expect it to be in English. She questioned why one of the cards indicated that the Appellant was enrolled at the university for the year 2013/14 when he was arrested in September 2013. He said he had started the course in early September and the demonstration was on 25th September. She questioned why there were two letters on different headed paper from the university. He said he got the second one from the Faculty that he attended because it had been questioned that such a Faculty existed. She questioned why the document at page 31 was stamped by the Ministry of Foreign Affairs given that he claims to fear the authorities in Sudan. He said it was his brother that had obtained that. He was in the UK at the time. She questioned the name of the person who had signed it. He responded that some people write their names in a different order and there is nothing odd about the name at all.
12. She questioned his claim to have lived with his uncle in a different town and he explained that his uncle also had a flat in Khartoum which was empty.
13. In submissions Ms Johnstone questioned the Appellant's statement that he had lived in Qadarif and not Omdurman. She submitted that there was no credible evidence that he had attended university. She asked me to give no weight to the document which he had produced to say he had lived in Omdurman. She submitted that the

photos on his ID cards were all the same. There was a spelling mistake in one of the letters. The professor's name was different. Even if it were the case that he was arrested he was released and would be of no interest to the authorities on his return. He said he was a member of a political party and then that he was not.

14. Mr Madubuije said in his submissions that what was actually said in the refusal letter at paragraph 2 was that the Appellant had been suspected of being a member of an opposition party. He had never said that he was a member. He asked me to give weight to the two letters from the university. He said it was he, as the Appellant's representative, who had taken steps to get the second letter, given what had been said in the determination of the First-tier Tribunal. He submitted that the onus is on the Respondent to show that the ID cards which were produced are forgeries. The photos on the cards are not all the same. He said that the name of the Professor on the letter has variations but this does not mean that it is wrong. It is just a slightly different spelling. With regard to the spelling mistake in the letter he said that there are spelling mistakes in documents, even determinations issued by the First-tier Tribunal. He submitted that the Appellant would be at risk on return on account of his political opinion. This has been established to the required standard of proof.

Burden and Standard of Proof

15. The burden is on the Appellant to show with regard to the asylum appeal that returning him would expose him to a real risk of an act of persecution for reasons set out in Regulation 6 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006. With regard to Humanitarian Protection he would have to show substantial grounds for believing that he would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules or face a real risk of a breach of his protected human rights

Findings and Decision

16. I have given very careful consideration to all the evidence before me. No submissions were made on the claim initially made that the Appellant would face persecution on the grounds of his ethnicity and I reject that element of his claim.
17. I accept that the Appellant attended university as claimed. There is evidence that English is taught there. In any event even at the time of the refusal by the Home Office the evidence was that the Appellant had been enrolled in the Faculty of Arts. It is common for languages to be taught in an Arts Faculty and therefore reasonable to assume that languages are taught at Omdurman and that it is not unlikely that English would be taught. The Appellant produced nine cards said to have been issued to him during his studies. Ms Johnstone tried very hard to persuade me that these cards were forgeries but I cannot reach that conclusion. The photographs on the cards were not all identical. The Appellant gave clear and immediate responses to the questions he was asked about the cards. He spoke of having to take time out of university because he had no money. He spoke of having resits which resulted on one occasion in him being given a card to use the library for only a month. The reasons he gave were perfectly reasonable. It is the case that as a Judge in this Tribunal I see many forged documents but I do find it very difficult to accept that an

Appellant would go to the trouble of buying or even putting together himself nine cards to establish that he had attended a university. All of the cards are different in one way or another. Why would he make them different? It is obvious that questions would be asked because they were different. I therefore accept that he attended the course as claimed. This means that he spent time studying in Omdurman.

18. The question therefore is whether he attended the demonstration, whether he was arrested, detained, ill-treated and failed to adhere to reporting conditions and whether he would be at risk on return to Sudan. The Secretary of State accepted the Appellant's account of events at the demonstrations to be externally consistent but said that because all the information about the demonstrations and the actions of the security forces is in the public domain the Appellant could have known about them whether he attended or not.
19. In his submissions Mr Madubuije relied on the decision **AY (political parties - SCP - risk) Sudan CG [2008] UKAIT 00050** in which the summary of the findings was as follows:

1. Opposition parties are allowed to function within relatively narrow parameters in Sudan.

2. The Sudanese authorities do not seek or even attempt to take action which could amount to persecution against all political opponents but in the main they seek to control by the use of fear and intimidation. Depending on the particular circumstances of an individual, they may resort to stronger measures, particularly against those actively engaged in building up grass roots democracy, working in support of human rights and involved in open criticism of the regime's core ideology and philosophy.

3. In general it will be difficult for ordinary members and supporters of the SCP or any other political party to establish a claim for asylum. They will need to show that they have been engaged in specific activities likely to bring them to the attention of the adverse authorities such as active and effective local democratic activity or support for particular human rights activities. Whether any individual political activist is at risk will necessarily depend upon his individual circumstances set within the context of the situation as at the date of decision. This will include an assessment of the nature of the activities carried out and how they will be seen by the authorities.

4. The legal status of an opposition party has no significant bearing in itself on whether an individual is likely to be at risk of persecution. Political activities also take place under the guise of cultural associations

20. I am prepared, given the low standard of proof, to accept that the Appellant was at the demonstration and that he was picked up by the police and detained. He was not a member of any party and does not claim to have been involved in any other political activities. Indeed he said that the demonstration was passing by and he decided to join in because he agreed with what the protesters were saying. He did not set out that day to attend a demonstration he knew had been planned. He was an onlooker who joined in on the spur of the moment. There is nothing to suggest that

he would have been known to the authorities prior to the demonstration. In those circumstances it does not appear to me to be likely that one of the conditions of his release would be that he provide information about the opposition party. I do not consider it likely that he would be required to report and be subject to the conditions stated. He claims that he was told that if he failed to provide information on the opposition party (of which he was not a member) he would be re-arrested and returned to prison but he is silent as to what information he gave the authorities to prevent this happening on the several occasions he reported between his release on 26th October 2013 and his decision to stop reporting in February 2014. I do not accept that if the authorities had any interest in him he would have been able to hide at his uncle's house in a different area of Khartoum for four months prior to leaving the country. If he had been reporting the authorities presumably had his details and would have made efforts to track him down had they any interest in him. He said he used his brother's address when he was at the university but has said nothing to suggest that the authorities pursued his brother for information on his whereabouts during the time he was hiding at his uncle's or indeed since he came to the UK. He has been in touch with his brother as it was he who obtained the letter from the university and sent it to him.

21. I find therefore that the Appellant has not established even on the lower standard of proof that he would be of any interest to the authorities in Sudan. I accept that **KY** was heard 7 years ago but no background information was put before me to show that there has been any change in the general attitude of the authorities with regard to returning failed asylum seekers in whom they had no interest at the time they left the country.
22. I find that the Appellant has not established that he would have a well-founded fear of persecution if he were returned to Sudan.
23. No submissions were made under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Notice of Decision

The appeal is dismissed on asylum grounds.

The appeal is dismissed on human rights grounds.

The Appellant has not established a right to Humanitarian Protection in the UK.

No anonymity direction is made.

Signed

Date: 31st August 2015

N A Baird

Deputy Judge of the Upper Tribunal