



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03286/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

Decision & Reasons

On 8 May 2017

Promulgated

On 9 May 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

Y A MOSA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co,
Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of Sudan. His date of birth is recorded as 1 January 1975.
2. He claims that the authorities detained and ill-treated him in 2003 and in 2008, and that he was at risk due to suspicion of supporting the Equality and Justice Movement, membership of the Berti tribe, and pressure to act as an informer.
3. By determination promulgated on 9 September 2016, FtT Judge Handley dismissed the appellant's appeal against the respondent's refusal of his claim.

4. The appellant sought permission to appeal to the UT on grounds which may be summarised thus:

Ground 1. Error in relation to expert report:

2. The FtT finds at [40] expert's comments on demeanour of appellant of little value ... no reasons, or inadequate reasons, given ...
3. The FtT finds at [40] that the appellant may have acquired information about the Berti ... prior to interview ... to enhance his claim ... speculation to support a negative finding.
4. No reasons, or inadequate reasons, for refuting the expert's view that the appellant had given "quite a good amount of useful information" to the respondent which supports his claimed ethnicity ...
5. Failure to make a finding on expert's view at [95] - [100] of his report, supporting the appellant's position on the origins of the Berti.
6. Error in light of case law: expert report not to be lightly rejected and heavy reliance to be placed on view of experts.

Ground 2 Mibanga point.

7. Error by reaching conclusion before surveying all the evidence; assessment of report after reaching negative credibility findings.

Ground 3.

8. Failure to make findings on 2 independent sources in appellant's bundle which demonstrate that appellant gave correct name of the current Berti king at his asylum interview.
9. No finding on expert's view of this matter at [101] - [105] of report.
10. Failure to take account of all relevant evidence.

5. At the hearing Mr Winter sought to argue additional grounds:

1. Failure to take account of items in the appellant's bundle, supporting his claim to be Berti; *separatim*, no checks on those documents by respondent, per *PJ* (Sri Lanka) [2015] 1 WLR 1322.
2. No reasons or examples for finding at [28] evidence vague and inconsistent.
3. Error at [30] and [34] in that release from detention does not equate with lack of interest.
4. Failure to take account of at [30] and [34] of Q/A 31 and 52 of interview. Appellant *had* said he was released on condition of providing information.
5. Inconsistency in findings at [31] that appellant not in danger, yet unlikely to return as life at risk
6. Finding at [32] not supported by evidence.

6. The expert report is by Peter Verney, prepared 8 August 2016, item 1, appellant's supplementary bundle in the FtT.
7. The evidence said to have been overlooked but not specified in the original grounds comprises items 2 and 3 of the appellants' first bundle in the FtT, copy statements and translations by a village head and a school head. These are also the items referred to at [1] of the additional grounds. The "originals" were identified in course of the hearing and are within the file.
8. Mr Matthews acknowledged that there was some force in the submission that the judge failed to deal with significant parts of the expert report going to the analysis of the appellant's state of knowledge, including [96] - [102] and [104] - [105], although he drew attention also to the degree of balance and caution expressed in the conclusions at [299] - [302]. He accepted that the judge made an error of fact, finding it adverse that the appellant did not say at interview that he had been asked to inform, when the appellant at two points did say that. He also acknowledged that the judge failed to deal with the two items of evidence referred to above.
9. I am satisfied that the further grounds, which overlap with the original, should be considered; and that while the original grounds on their own might not rise above disagreement on the facts, the three main points which have emerged above together amount to error of law: failure to deal adequately with the expert report; misapprehension of the appellant's account as given at interview; and omission to deal with two items of evidence.
10. I record the view which I expressed incidentally about the latter two items: they are not of a nature to trigger an obligation on the respondent to seek to verify them at source (and I note that the appellant had not previously requested the respondent to do so).
11. The decision of the FtT is **set aside**. None of its findings are to stand, other than as a record of what was said at the hearing.
12. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
13. The member(s) of the FtT chosen to consider the case are not to include Judge Handley.
14. No anonymity direction has been requested or made.



8 May 2017

Upper Tribunal Judge Macleman