Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number AA/00366/2016

THE IMMIGRATION ACTS

Heard at Centre City Tower
On 19th March 2018

Decision and Reasons Promulgated
On 21st March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

[A A]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Pipe (Counsel, instructed by Halliday Reeves Law Firm)
For the Respondent: Mr Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant sought asylum claiming to be from Sudan. The application was refused for the reasons given in the Refusal Letter of the 18th of February 2016. The Appellant's appeal was heard by First-tier Tribunal Judge Colyer at Nottingham on the 4th of April 2017. The appeal was dismissed for the reasons given in the decision promulgated on the 9th of May 2017

2. The Appellant's immigration history was considered in paragraphs 32 to 40 where the details he had given on arrival in 2012 were discussed along with his route to the UK. The Judge then considered the Appellant's previous asylum claim and the decision in paragraphs 41 to 46. The expert's report was discussed in paragraphs 47 to 51 along with linguistic evidence.

3. The Judge found that the Appellant had not shown that he was from Darfur and went on to find in paragraphs 55 to 62 that the Appellant had shown that he is from Sudan but did not go on to make a finding on whether the Appellant was from Chad. The Appellant's claims about events in Sudan were rejected and his failure to claim on route undermined his credibility. The Appellant could return to Sudan and would not be at risk in his home area.

4. The grounds argue that the Judge had not considered whether the Appellant would be at risk by virtue of his Tama ethnicity. The Judge had found that Mr Verney, the expert, did not have expertise in linguistics but did not give support for that finding although the Respondent had not questioned Mr Verney's expertise. The Judge had not considered that Rutana was a colloquial term for non-Arab tribal languages. In paragraph 61 the Judge found the Appellant was from Sudan and that he was not from Sudan, the Judge should have followed the findings of Judge Smith who had found that the Appellant was from Sudan. Permission was granted on the 13th of September 2017 by Judge Adio who found the grounds arguable.

5. The Secretary of State's rule 24 response was submitted on the 13th of October 2017. In seeking to uphold the decision it was noted that the Secretary of State had accepted the expert's expertise but it was argued that the Judge was entitled to consider his linguistic qualifications. It was accepted that a holistic reading of paragraph 61 showed that the Judge accepted that the Appellant was from Sudan and that the assessment of internal relocation had to be made on that basis. There is no challenge in the rule 24 response to the finding made in paragraph 61.

6. At the hearing there had been an application for an adjournment as the Appellant's representative was ill and, given the weather conditions unable to attend. The matter was put back for alternative representation to be instructed and in the event Mr Pipe, who was appearing in other cases in the list, was instructed and having been given time was then able to present the case. In doing so he was able to speak to Mr Mills leading to considerable agreement towards the resolution of the appeal. I am grateful to Mr Pipe for assisting at such short notice.

7. For the Home Office it was accepted by Mr Mills that it would be difficult to justify the decision and that it was agreed that the appeal would have to be remitted to the First-tier Tribunal for re-hearing. The disagreement between them centred on the findings in paragraph 61 and whether it had been found sustainably that the Appellant is from Sudan. In any event the policy on returns to Sudan has changed, the Home Office maintain the

country guidance is no longer correct and that internal relocation to Khartoum is possible and that the new guidance would need to be applied. If the judge had concerns about aspects of the expert's ability to comment on various aspects then Mr Mills accepted that should have been raised with the parties at the hearing, this was a matter of basic fairness.

8. Given the Home Office approach to the Judge's findings set out in the rule 24 response it appears that there is no challenge to the finding that the Appellant has shown, to the lower standard, that the Appellant is from Sudan. That being the case that finding is preserved. However the other findings made by the Judge with regard to the Appellant's account of events in Sudan are not maintained. The next First-tier Tribunal Judge who considers the case will have to consider the basic facts of the Appellant's claim and to apply the new policy with regard to internal relocation in that context.

9. The appropriate course of action is to set aside the decision of Judge Colyer and to remit the appeal to the First-tier Tribunal for re-hearing by any Judge except Judge Colyer. The finding in relation to the Appellant's nationality is preserved. In addition to the evidence relating to the facts of his claim the Appellant will also have to address the Home Office guidance on returns to Sudan.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision, the finding that the Appellant is a national of Sudan is preserved.

The appeal is remitted to the First-tier Tribunal to be re-heard, not by Judge Colyer.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In remitting the appeal to the First-tier Tribunal I make no fee award which remains an issue for the First-tier Tribunal at the conclusion of the appeal.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 20th March 2018