Upper Tribunal
(Immigration and Asylum Chamber) PA/02516/2018

THE IMMIGRATION ACTS

Heard at Glasgow
on 25 July 2019

Decisions & Reasons Promulgated:
on 5 August 2019

Before

UT JUDGE MACLEMAN

Between

S A R

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 A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of Sudan, born on 29 April 1990, and as a non-Arab Darfuri, being a member of the Gimir tribe. He sought asylum in the UK on 23 October 2016.

2. The respondent refused the claim by letter dated 7 February 2019. The appellant had used another identity, of being born in Saudi Arabia on 29 April 1984. It was not accepted that he is of the Gimir tribe. Even if he was, conditions had changed since country guidance was issued in 2009

and 2015, and he had not shown that he was wanted by the authorities or was at risk. There was no basis for any grant of leave.

3. The appellant appealed to the FtT. His grounds were perfunctory and generic.

4. FtT Judge Montgomery dismissed the appeal by a decision dated 11 September 2018.

5. The appellant applied to the FtT for permission to appeal on grounds which, lightly edited, are as follows:

> (1) reaching unclear or contradictory findings and failing to resolve those
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> … On the one hand the FtT accepts the core of the appellant's account as both plausible and consistent with external findings [(20]; the appellant has told a credible story [21]. However on the other hand finds at [25] that it must still carefully consider whether the core of the appellant's account can be accepted as credible [25]. The latter finding appears to be contradictory to the previous findings and the FtT has failed to resolve this matter …
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> (2) failing to assess the evidence in the round
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> … The FtT has arrived at adverse credibility findings at [16 – 19] … prior to the assessment of the expert report and medical report … it is wrong in principle to form a concluded view on the probable veracity of particular items of evidence and then, from that fixed point, to allow that to govern the assessment of other evidence. Although the FtT has said it must consider the evidence in the round … the FtT has paid [only] lip service… The FtT has erred for reasons outlined in *AM* [2018] 4 WLR 78 at 19 (a) and in *TF and MA* [2018] CSIH 58 at 38-39, 48 and 50-52. *Separatim* the finding that there is no credible evidence to indicate from the Gimir tribe is not supported, or not adequately supported, by the terms of the expert report.
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> (3) errors of law in light of *KB and AH* (credibility – structured approach) [2017] UKUT 00491
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> The FtT erred by failing to bear in mind the approach advocated in *KB* … in particular as set out at [26] … The FtT accepts at [20] that the appellant scored account as plausible and consistent with external factors. The FtT accepts at [21] that the appellant has told a credible story. Although the FtT has focused on other inconsistencies these do not go to … determining the appellant's ethnicity. The appellant has given sufficient detail. In light of the foregoing and where the FtT has accepted the core account and plausibility of the claim, the FtT ought to have allowed the appeal…

6. Permission was refused by the FtT but granted by the UT, on the same grounds, on 9 May 2019.

7. Mr Winter's submissions were along the lines of the grounds. The main further points which I noted were these:

   (i) Ground 1 showed inconsistency and lack of clarity. That was significant, as the adverse factors in the decision were all peripheral to the essential claim, based only on ethnicity.

   (ii) As the core of the ethnic claim had been found plausible, the appeal should have been allowed.

(iii) In terms of ground 2, the judge allowed her adverse credibility findings to sway her view of the expert report. Adverse credibility findings on other issues could not displace independent expert evidence.

(iv) In light of that evidence, the judge was wrong to say at [28] that there was "no credible evidence to indicate that he is from the Gimir tribe".

(v) On ground 3, the judge's finding at [21] that the appellant "has told a credible story" should have led to the appeal being allowed, not dismissed.

(vi) The decision should be set aside and the case remitted for a fresh hearing.

8. Mr Govan relied on the respondent's rule 24 response and submitted further as follows:

(i) Grounds 1 and 3 run together. They take certain comments of the judge out of context.

(ii) A finding of plausibility and consistency was one thing, but it remained for the judge to make an assessment overall credibility, weighing all factors.

(iii) The appellant used two identities and told stories full of self-contradictions. He had shown himself to be fundamentally an unreliable and untruthful witness, and had simply not proven that he was who he said he was. That clear conclusion was open to the judge and supported by ample reasons. Grounds 1 and 3 amounted to no more than disagreement

(iv) On ground 2, the judge had considered the expert report and medical evidence both on their own terms and in context of all the other evidence. She had not made up her mind before considering all the evidence, but in the round.

(v) The appellant was, on any view, a serial liar. His appeal should be dismissed.

9. Mr Winter in reply said that his criticism of the treatment of the expert report was not that the judge failed to consider the evidence in the round, but that she allowed her adverse findings on credibility to impact on her assessment of the expert evidence, which was contrary to the approach explained in *TF and MA.*

10. I reserved my decision.

11. The submission that the appellant is a serial liar is one which he could hardly resist, either in the FtT or in the UT.

12. It was of course possible for the appellant to be both a serial liar and a member of the Gimir tribe. The FtT had to reach a decision which showed it was open to that possibility. Reading the judge's decision fairly and as a whole, it is clear that she did take all the evidence in the round.

13. The case for the appellant was, or came very close to, the proposition that because he had an expert report which supported him, he had to succeed, no matter how seriously damaged his credibility was by matters outside the report. I was taken to no passages in *AM* or in *TF & MA* which support such a doctrine, and I do not think it has any support, either there or elsewhere in case law. A judge must give an expert report the weight it deserves, but overall credibility remains for a judge, weighing all the evidence, including expert evidence, in the round. The judge gave many impeccable reasons for finding the appellant not to be a satisfactory witness.

14. I was not taken to any passage in *KB*, at [26] or elsewhere, which supports ground 3. I see nothing in that case to show error of law in the decision of the FtT in this case.

15. The grounds are largely based on taking two sentences, and use of language, out of context. It is instructive to read the respondent's refusal letter and the record of submissions in the decision at [11], i.e. the case for the appellant to meet. As put to the judge at [11], it was "not the credibility of the story that was in issue but the credibility of this appellant". The point was also put to her that the expert "had not grasped that the Home Office refusal was based not on refuting that the claimed experiences were possible in Sudan but on whether this appellant actually had these experiences".

16. The judge's acceptance at [20] that the appellant's account is "plausible and consistent with external factors" means no more than it says, and it gives the expert report all the weight it could properly carry. It does not take the case any further than that.

17. The phrase in the first sentence of [21], "… the fact that the appellant has told a credible story", should perhaps have carried on in the language of "a plausible story"; but it is obviously not an overall positive credibility finding, either in context of the whole decision, or even of the same sentence, which carries on, "… does not necessarily mean that he was subjected to the experiences he describes, or that he is who he claims to be".

18. The phrase at [28], "there is no credible evidence", might have been better framed, but again the criticism is highly selective.

19. Reading the rest of [28], and the decision as a whole, the appellant can be in no doubt that all points in his favour have been properly weighed, including the expert report, but that his evidence has not been found probative, even to the lower standard. The judge says, "I accept that he is

a Sunni Muslim Sudanese male. The rest of his account I reject in its entirety. He has failed to establish that he is … Gimir [or] that he came to adverse attention of the Sudanese police". Many good reasons are given for that conclusion, most of which have not been subjected, and are not open, to any criticism.

20. The grounds amount only to selective and partial disagreement. They fail to show that the decision, read as it should be, falls to be set aside for having involved the making of an error on a point of law.

21. The judge did not resolve the parties' submissions on whether country guidance was superseded, or should still be followed, and whether the appellant could succeed on ethnicity alone. However, the finding that the appellant failed to establish any part of his claim, including ethnicity, has not been displaced, so that oversight (which was not mentioned by either side) does not matter.

22. The decision of the FtT shall stand.

23. The FtT made an anonymity direction, which is preserved.

26 July 2019
UT Judge Macleman