



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07709/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 22 March 2019**

**Decision & Reasons Promulgated
On 26 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**M. A.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Soltani, Solicitor, Iris Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a citizen of Sudan, entered the UK illegally and made a protection claim which was refused on 6 June 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Hands, in a decision promulgated on 30 July 2018.

The Appellant's application for permission to appeal was granted by Upper Tribunal Judge Chalkley on 19 November 2018 on the ground that it was arguable the Judge had made inconsistent findings of fact, so that the assessment of risk of harm faced by the Appellant as a member of the Berti

tribe was materially flawed. The Respondent did not reply to that grant with a Rule 24 response.

The Appellant's case was that he had come to the adverse attention of the Sudanese authorities, and that he had been arrested on a number of occasions at demonstrations. The Judge found in paragraphs 16 and 20 of her decision that he had not. However in paragraph 15m she had earlier found that he had been arrested, without identifying when, where, or in what circumstances this had occurred.

Before me the Respondent accepts that this inconsistent approach renders the Judge's decision unsafe, and, that a hearing afresh is required. For the Appellant Ms Soltani accepts that a fresh hearing is the only pragmatic course open. I agree. None of the findings of fact made by the Judge are safe, or can be preserved. In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First tier Tribunal Judge Hands, at the North Shields Hearing Centre. An Arabic interpreter is required. The parties accept they have already filed the evidence they wish to place before the Tribunal. Accordingly the remitted appeal is suitable for the short warned list. The parties should expect the appeal to called on for hearing at short notice.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 22 March 2019

Deputy Upper Tribunal Judge J M Holmes