



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08045/2017

THE IMMIGRATION ACTS

Heard at Field House
On 3 April 2019

Decision & Reasons Promulgated
On 24 September 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TOR BIAR TOR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr I Mustafa, Counsel instructed by Genesis Law Associates Ltd

DECISION AND REASONS

1. This appeal came before the Upper Tribunal on 18 October 2018 when the Vice President, Mr CMG Ockelton, presided. We found an error of law and gave our reasons in a decision promulgated on 9 November 2018 when we identified the respondent as “the claimant” and ruled that this was not a case where there should be any restriction on reporting. That remains the position.
2. We indicated then that we thought it unlikely that there would be any need to hear further oral evidence and we were particularly concerned about any difficulties the claimant might face as a male citizen of South Sudan in the event of his return there.
3. The claimant had not produced any further evidence. I checked with Mr Mustafa
4. To make quite sure that I had not overlooked anything and I had not. The Secretary of State produced (belatedly) an additional bundle described as “background evidence

bundle” and also a “speaking note” provided by Mr Jarvis. Sensibly, there was no objection to the late production of documents that are in the public domain.

5. It is for the claimant to establish, if he can, that removing him to Sudan would expose him to a real risk of “serious harm” as defined in Article 15 of the Council Directive (2004/83/EC) (Qualification Directive) or, if he cannot do that, that removing him there would be contrary to his rights protected by Article 3 of the European Convention on Human Rights.
6. As we explained in finding that there was an error of law, the “issues that has not been resolved satisfactorily in this case concern the difficulties that [the claimant] might face as a male citizen of South Sudan if he is returned to that country”.
7. I begin by considering the claimant’s bundle. The relevant parts start with a report entitled “Soldiers Assume We Are Rebels” dated 1 August 2017. This is prepared by Human Rights Watch and carries the subtitle “Escalating Violence and Abuses in South Sudan’s Equatorias”.
8. The report, helpfully, includes a map in which the southern regions of South Sudan are identified, from West to East as Western Bahr El Ghazal, Western Equatoria, Central Equatoria and Eastern Equatoria. These regions border the Central African Republic, the Democratic Republic of Congo, Uganda and Kenya. The city of Juba is very close to the border of Central Equatoria and Eastern Equatoria. It is well-known that a conflict broke out in Juba in December 2013 and the war had spread to the Greater Equatoria region so that “over 1,000,000 civilians, many of them from villages in this region, have fled to neighbouring countries. More than 700,000 crossed to Uganda alone”.
9. The report continues:

“Despite the signing in August 2015 of the Agreement for the Resolution of the Conflict in South Sudan (ARCSS), between the government and the army opposition led by former Vice President Riek Machar, the Sudan People’s Liberation Movement/Army in Opposition (the IO), attacks on civilians have now become commonplace in the previously stable southern and western regions of the country. Fighting between government forces and the IO in the Juba reignited in July 2016.”
10. Dealing with conflict in the Greater Equatorias region in late 2015 human rights researchers:

“documented the unlawful killing of at least 47 civilians from the Kajo Keji area in the former State of Central Equatoria, by government forces between June 2016 and May 2017”.
11. They also “documented the unlawful killing of at least thirteen men and one woman” all civilians by government forces during a largescale attack on the town of Pajok in the former State of Eastern Equatoria.
12. Less dramatically but still significantly Human Rights Watch interviewed witnesses to “dozens of cases of arbitrary detention by the army” which included in many cases detention in shipping containers and enforced disappearances which were denied by the authorities. The majority of detainees were beaten and tortured. Human Rights Watch was satisfied that the “accounts show a clear pattern of government forces unlawfully targeting civilians for killings, rape, arbitrary arrests disappearances, torture, beatings, harassment and the looting, burning and destruction of their property”.

13. The reports of many examples of government soldiers firing indiscriminately in populated areas whether it be military attacks. No regard was had for civilian safety. Such shootings were used to instil fear. Little progress had been made in establishing an international court to hold accountable those who had done wrong.
14. The report observed:

“The impact of the violence and persistent abuses against the civilian population is devastating. Acute food insecurity is widespread. Six million South Sudanese, almost half the country’s population, face severe food shortages. The outflow of refugees continues at an alarming rate, uprooting entire communities and effectively emptying swathes of land, at one point 9,000,000 civilians remain internally displaced, with some sheltering on UN bases. The crisis is costing the international community billions of dollars.”
15. There are reports making similar points from the “New Arab” dated 22 February 2017 and “The East African” dated 14 August 2017. This is not duplication. The incidents are not necessarily the same. There are examples of internal displacement and unjustifiable behaviour by armed forces.
16. A difficulty for the appellant is that the background evidence bundle provided by the Secretary of State contains more recent material. Its oldest report is dated May 2018. The other reports are in February or March 2019.
17. Significantly, on 21 December 2017 the belligerent parties signed a “Cessation of Hostilities Agreement” since when conflict activity has reduced.
18. The report from the International Crisis Group dated 13 March 2019 is not unhelpful to the claimant. It refers to plans for unifying a national army and drawing internal boundaries as “lagging far behind schedule” and expresses the concern that the disturbances of recent years will return if the opportunity for resolution is lost.
19. I have looked particularly at a report from the United Nations Security Council dated 28 February 2019. It begins by referring to “modest progress” in implementing agreement. Nevertheless it said that the “permanent ceasefire was upheld in most parts of the country and confidence building among the parties continued”.
20. Under the heading at (III) “Security Situation” the report notes at paragraph 17 that the:

“... ceasefire continued to hold in most of the country and the overall security situation improved. Violence generally declined amid increasing rapprochement between government authorities, then SSPDF and the pro-Machar SPLA in opposition at the local level”.
21. The same report acknowledged that tensions “remained high in Central Equatoria” and there was an incident of killing seven people in December and the killing of nineteen civilians in January.
22. The report at (IV) “Humanitarian Situation” acknowledged that by the end of December there were 1.87 million women, men and children who were internally displaced and 2.27 million displaced to neighbouring countries. This is clearly indicative of very significant past displacement.
23. However I must look at the present situation. I acknowledge Mr Mustafa’s reminder of recent evidence of considerable difficulties but not since the ceasefire was announced. I

also accept that the ceasefire might prove to have introduced a welcome truce rather than a resolution of the conflict but there is no evidence of the truce (if that is what it is) breaking down in way that creates a real risk to the claimant.

24. I really can do no better than adopt a phrase I take from Mr Jarvis's speaking notes because, with respect, I think they go right to the core of the matter. He says, having acknowledged the evidence of displacement and the existence of reports of breaches of human rights in a variety of ways:

"In that respect the SSHD asserts that the figures at paras 45-51, pages 9-10 of general deaths and injuries, (not specific to civilians) from across of whole of South Sudan over the relevant period are, with the most respect to the victims, (whether civilian or not), very small in the context of the overall population of the country which was estimated, as of 2017, at 12,575,714 by the World Bank."

25. It is difficult to write these decisions without appearing callous. One human death is a tragedy and one abuse of human rights is one too many but international protection mechanisms do not extend to the population as a whole unless there is a "serious and individual threat to a civilian's life or person by reason of discriminate violence in situations of international or internal armed conflict". The evidence does not support a conclusion of there being such a risk in this case. The appellant would be returned to a country where he would find it difficult to obtain any kind of work because the economy generally has been shattered by war and where there is a slight risk of injury because of violent disturbance but that risk is "slight" rather than "real" and the economic difficulties are not nearly as severe as they would be to invoke the protection of Article 3. Further he has the advantages of coming from the largest, Dinka, tribal group and having been educated to a high standard and having gained experience running a small business. He can be expected to cope.

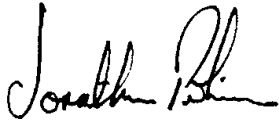
26. In simple terms the case cannot succeed on the evidence that is available. The more recent evidence all points to a difficult country that is improving and the risks necessary to establish a claim for international protection have not been established.

27. It follows that having set aside the decision of First-tier Tribunal I remake and dismiss the appeal against the Secretary of State's decision.

Notice of Decision

28. The claimant's appeal against the Secretary of State's decision is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 23 September 2019