Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06599/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28th March 2018	**On 20th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

SHARIF [I]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hodson, Counsel
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sudan born on [ ] 1999. The Appellant left the Sudan on 5th April 2015 made his way via Libya, Italy and France to the UK arriving by train on 27th August 2015. He claimed asylum on 29th September 2015. The Appellant's claim for asylum was based on a fear that if returned to Sudan he would face mistreatment due to his race and imputed political opinion. The Appellant belongs to the non-Arab Massalit tribe. The Appellant's claim for asylum was refused by Notice of Refusal dated 27th June 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Chana sitting at Hatton Cross on 9th August 2017. In a decision and reasons promulgated on 25th September 2017 the Appellant's appeal was dismissed on all grounds.

3. Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended:-

   (i) That the First-tier Tribunal Judge had made adverse credibility findings which contradict the Respondent's expressed concessions. The First-tier Tribunal judge had gone behind the refusal letter and dismissed the appeal on the basis of findings that were inconsistent with the case brought by the Respondent.

   (ii) That the First-tier Tribunal Judge's approach to the evidence of the Appellant in reaching sweeping adverse credibility findings against him took no account of the young age of the Appellant either at the time of the hearing or when he claimed asylum or generally in relation to events when he was a child.

   (iii) That cogent, up-to-date and consistent professional medical and other evidence relating to the mental health problems of the Appellant were overridden by the First-tier Tribunal Judge on the basis of surmise and totally unfounded personal opinion.

   (iv) That wholly inadequate reasons were given from departing from current country guidance applicable to the Appellant; limited country material from only one source was cited and taken into account by the First-tier Tribunal Judge who failed to justify his decision contrary to country guidance. Further other recent country material confirming country guidance was not considered, dealt with or taken into account at all.

4. On 8th December 2017 Judge of the First-tier Tribunal Murray granted permission to appeal. He considered that all the above grounds had merit and that the Respondent had accepted in the decision letter that the Appellant was a member of the Massalit tribe; that he encountered problems from the Janjaweed in his village and that he had demonstrated a subjective fear of return to his village. The Secretary of State had contended in the decision letter that the Appellant could internally relocate because more recent evidence showed that the country guidance case law could be departed from and the judge had found at paragraph 33 that the Appellant had not faced problems from the Janjaweed or was attacked by them. Consequently the judge had gone behind the Respondent's concession.

5. Further Judge Murray considered that the First-tier Tribunal Judge had arguably erred in law in making no allowance for the fact that the Appellant was a child when events occurred and was a vulnerable witness due to mental health issues. He also considered that the judge had arguable erred at paragraphs 47 to 49 in the assessment of medical

evidence and had failed to give adequate reasons for departing from country guidance at paragraphs 51 to 54.

6. There is no Rule 24 response lodged. It is on this basis that the appeal comes before me initially to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Hodson. Mr Hodson is extremely familiar with this matter. He appeared before the First-tier Tribunal and he is also the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Duffy.

Concession

7. Mr Duffy acknowledges that the key issue is whether or not the judge has gone behind the concession in this matter. The Respondent had accepted in her reasons for refusal letter dated 27th June 2017 that the Appellant was a national of Sudan and a member of the Massalit tribe. The Respondent had further stated that "it is considered consistent with background evidence that the Janjaweed would have attacked you and your village in Sudan" and it was therefore "accepted that you encountered problems from the Janjaweed in your village." The Respondent had concluded "it is accepted that you are a member of the Massalit tribe and that you encountered problems with the Janjaweed and government supporters in your village." Mr Duffy concedes the judge has gone behind that concession and paragraph 33 in particular of his determination shows that the First-tier Tribunal Judge has made core adverse credibility findings against the Appellant which flatly contradict what the Respondent has expressly accepted.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been

rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

10. I agreed with the submission made by Mr Hodson that it is never open to a judge to go behind express concessions accepted by the Respondent in the reasons for refusal letter. It is, as he points out to me, the Respondent's case that is brought against the Appellant's claim for asylum not the judge's and that it is never appropriate or lawful for a First-tier Tribunal judge to substitute his or her reasons for those advanced by the Secretary of State where the First-tier Tribunal Judge's reasons involve factual findings inconsistent with the factual basis of the decision. In this matter the judge has gone further at one point by way of making a blanket adverse credibility finding against the Appellant which again is in stark contrast to the approach taken by the Respondent in stating "I am not being ... told the whole truth about the Appellant's circumstances. The more credible explanation is that the Appellant … was living in Khartoum before he came to this country and his whole story about his father on the farm has been fabricated."

11. This and the findings of the judge at paragraph 55 and his findings at paragraph 29 are wholly different and fundamentally incompatible to that made by the Respondent as to the Appellant's overall claim namely that he did have a genuine subjective fear on return to Abyad village where his family farm is located, reflect that the judge has materially erred in law.

12. In such circumstances I find that there are material errors of law that make the whole of the decision unsustainable. I set aside the decision with none of the findings of fact of the judge to stand.

Further Submission

13. Mr Hodson asked me to go on to rehear this matter and to remake the decision allowing it pointing out that that would be in accordance with current country guidance. He takes me to the up-to-date guidance provided by the Danish Immigration Service dated August 2016 which is a detailed analysis between the Danish Immigration Service and the UK Home Office Fact Finding Missions on the Sudan. He reminds that the burden of proof is on the Secretary of State in the event that country guidance is challenged. Mr Duffy says there is a change in country evidence shown in the 2106 report and again in 2017 and that potentially internal relocation is now possible.

14. Against this background Mr Hodson refers me back to the Grounds of Appeal pointing out that it is the submission on the Appellant's behalf that

all necessary bases for an appeal on the Appellant's behalf are met. He reminds me that the Appellant was of young age at the time of hearing and that the First-tier Tribunal Judge's adverse credibility findings are legally objectionable in themselves in that they fail to take into account at all the young age of the Appellant not least when many of the material events occurred. Further the judge has failed to give due consideration to the report from Dr Sundaran, consultant psychiatrist from Medway Community Mental Health team dated 2nd August 2017 which records that the Appellant was admitted for "psychotic illness" on 2nd March 2016 and was only released on 23rd May 2017 for management of his condition. He emphasises the considerable ongoing mental health problems of the Appellant and that it would be unduly harsh to expect the Appellant to relocate to Khartoum particularly bearing in mind that country guidance indicates that anyone from the Appellant's tribe or the region from where he originates cannot relocate to Khartoum. Mr Duffy relies on his previous position and indicates that it is a matter for me as to how I now proceed.

Findings on the Remaking of the Error of Law

15. I am persuaded by Mr Hodson that the correct approach is to go on and remake this decision and to allow the appeal. It is accepted that the Appellant has a fear from the Janjaweed and that he is from the tribe which he states he is and there is consequently clearly a Convention reason. His fear is the attack which it is accepted took place and consequently he cannot be expected to relocate to Khartoum. There is much within the report of the Danish Immigration Service which supports the Appellant's position but even if I accept that there some areas which indicate that return may be possible the Appellant's circumstances are such in following country guidance and the concessions made that he cannot return to Khartoum which is where he would have to be returned to. Further it is appropriate that I look at the current health and age of the Appellant and Mr Duffy does not seek to challenge the fact that the Appellant has been the subject of a professional mental health assessment which diagnose him from suffering from a psychotic illness and that thereafter he has been detained under Section 48 of the Mental Health Act for over a year.

16. The country guidance of *AA (Non-Arab Darfuris – relocation) Sudan CG [2009] UKAIT 00056* as reaffirmed in *MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC)* supports the proposition that all non-Arab Darfuris are at risk of persecution in Darfur and cannot be reasonably expected to relocate elsewhere in Sudan. Further therein the Tribunal in *AA* went on to hold that "it is clear that persons who are non-Arabs from Darfur facing relocation to Khartoum are now a risk category." It is interesting to note that the Appellant in *AA* was also from the Massalit tribe as is the Appellant in the instant appeal.

17. In all these circumstances I consider firstly the concessions that are made, secondly the position relating to the Appellant's mental health, thirdly his age at the time the incidents occurred and fourthly that it is appropriate to

follow country guidance in this matter and that this is an Appellant who has given a credible version of events. Standard of proof in asylum cases is whether something is reasonably likely to have occurred. That is accepted by the Secretary of State. So far as the approach to credibility is concerned that requires an assessment of the evidence of the general claim including the internal consistency, the plausibility of the claim and external factors of the sort typically found in country guidance. All those requirements are met. Further it is clear that this is not an Appellant who based on country guidance could possibly be returned to Khartoum.

18. In such circumstances I am satisfied that the Appellant has made out his case and I remake the decision allowing the appeal on asylum grounds.

Decision

The appeal is allowed and I remake the decision allowing the Appellant's appeal on asylum grounds.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made

Signed Date

Deputy Upper Tribunal Judge D N Harris