



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

Appeal Number: AA/07681/2013

THE IMMIGRATION ACTS

Heard at: Manchester

On: 21st March 2014

**Determination
Promulgated**

On: 20th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**ABBAS IBRAHIM ABBAS KHALIL
(NO ANONYMITY DIRECTION)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**For the Appellant:
Officer**

Mr McVeety, Senior Home Office Presenting

For the Respondent: Ms Santamera, Broudie Jackson and Canter

DETERMINATION AND REASONS

1. The Appellant is a national of Sudan date of birth 10th April 1978. On the 31st October 2013 the First-tier Tribunal (Judge Edwards) dismissed his appeal against the Secretary of State's decision to remove him from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999. That decision had followed a rejection of the Appellant's claims to international protection.

2. Permission was granted to appeal against Judge Edwards on the 29th November 2013 and on the 5th February 2014 Upper Tribunal Judge Chalkley set the determination aside in its entirety. The reason given in Judge Chalkley's written decision is that the First-tier Tribunal erred in failing to consider all of the evidence in the round: "the judge makes what are effectively negative credibility findings and only having made them did he then consider expert evidence from country expert Mr Verney and medical evidence from Dr Lord". The decision of the First-tier Tribunal was therefore set aside. The matter has come before me for re-making.

Basis of Claim

3. The Appellant states that he has a well-founded fear of persecution in Sudan for reasons of this ethnicity, imputed political opinion and membership of a particular social group. He claims to be from the Berti tribe of Southern Sudan. He states that in 2003 he was called up to perform military service in Darfur. He refused to do this on grounds of conscience. He was detained and tortured and was shot in the leg by an officer. He has sustained numerous scars as a result of this ill-treatment. Whilst in military hospital he managed to escape. The Appellant arrived in the United Kingdom in 2004 and claimed asylum but was returned to Greece. He has spent ten years living rough in Greece but he submits that he cannot now be returned to Sudan where his life would be in danger.

Reasons for Refusal

4. The Respondent notes that when the Appellant claimed asylum in 2004 he claimed to be from the Tunjur tribe. The Appellant's explanation that he was afraid that he would be returned to Sudan is noted but rejected. The Respondent cannot rely on the Appellant's evidence. The Respondent does not accept that the Appellant is either Tunjur or Berti. Other elements of the claim are not accepted. The Respondent does not find it credible that the Appellant would be able to escape by jumping from a hospital window and running away if he had been shot in the leg.

Legal Framework

5. The burden of proof is on the Appellant who must show it to be reasonably likely that he has a well-founded fear of persecution or serious harm in Sudan if returned there today.
6. Mr McVeety accepts that if the Appellant discharges that burden in respect of his ethnicity then he is a refugee: AA (non-Arab Darfuris -

relocation) Sudan CG [2009] UKAIT 00056. Conversely Ms Santamera accepts that if the Appellant does not discharge that burden his appeal will necessarily fail, since I would be rejecting the truthfulness of his claim.

The Evidence

7. The Appellant's evidence is set out in the transcripts of his interviews with UKBA staff dated 30th June 2013 (screening) and the 22nd July 2013 (substantive). He has further sworn and adopted a witness statement dated 25th October 2013. He gave oral evidence before me a full note of which can be found in the record of proceedings.
8. In addition to his own evidence the Appellant relies on three other documents. The first is a letter from the Chairperson of the Berti and Tunjour Community in the United Kingdom, Dr Salah Osman, who writes to state that having personally interviewed the Appellant for over an hour he is of the firm opinion that the Appellant is from the Bertitribe in North Darfur state. The second is a report by Mr Peter Verney, a recognised expert on the Sudan, who has reached the same conclusion. The third is a report by Dr Lesley Lord who, in summary, finds the Appellant to bear numerous scars on his body. I will consider the evidence of all three of these witnesses in detail in my findings.
9. The Respondent relied on the transcript of the interview given by the Appellant on the 27th September 2004. This is evidenced to prove the uncontested assertion that the Appellant had then claimed to be of Tunjur ethnicity. The Respondent further relies on the account offered by the Appellant in the current claim, which is said to be implausible and inconsistent.
10. I have read and considered all of the evidence before me including that which is not expressly referred to herein.

My Findings

11. The Respondent does not accept that the Appellant is Berti because when he claimed asylum in 2004 he said he was Tunjur [paragraph 12 RFRL]. The Appellant was interviewed about his claimed ethnic origins and the Respondent found his replies to be vague; the information he was able to recite was all readily available in the public domain [13]. Moreover the Respondent considered that the Appellant's account of detention, ill-treatment and escape was not credible [14-17].
12. Lying to the immigration services is not behaviour to be condoned. It is very likely to leave the liar in the situation in which

this Appellant now finds himself, with any subsequent evidence rejected as untrue. It indicates a willingness to tell untruths to get what you want. To that extent it diminishes the weight that can be attached to the Appellant's evidence. That said, I accept that as a matter of logic, one lie does not necessarily mean that all subsequent evidence is untrue. The Appellant has said that he was advised to say that he was Tunjur back in 2004 by other members of the Darfuri community, and terrified of return to Greece, he took that advice¹. He would not be the first asylum seeker to have misguidedly followed "advice" of this sort. Although the 2004 claim cautions me in my assessment of the Appellant's current evidence, it cannot in itself be determinative of this appeal.

13. In respect of the Appellant's knowledge of the Berti tribe I have three sources of evidence: that of Dr Osman, Mr Verney and of the Appellant himself.

14. The letter dated 6th August 2013 from Dr Osman is brief. It is on the headed notepaper of the 'Berti and Tunjour Community in the UK' and full contact details including a telephone number and email are provided. Dr Osman writes that his organisation provide supporting letters for "genuine refugees" from the Berti and Tunjour tribes of Darfur. He writes:

"the community will conduct a thorough investigation and test history, knowledge, events and conduct an interview in order to confirm ethnicity or where do people come from in Sudan. We do allocate a panel of expertise native speakers of the region according to where the claimant come from and what language does he /she speaking. We have very strict policies so as to ensure that the evidence we collect to identify Darfur's and prepare the letter of support is exact. I interviewed him by asking very important information about the Berti tribe in Darfour after an hour interview I can say that Mr Abbas Khalil is indeed from Berti tribe and is from Malitte in North Darfur State"

15. As one would expect of an expert witness, the report of Peter Verney dated 28th October 2013 is rather more comprehensive. In order to prepare his report Mr Verney had regard to all of the relevant documents in the Appellant's case including his interviews, statements, the refusal letter and the medico-legal report of Dr Lord. He personally interviewed the Appellant using Sudanese Arabic with the assistance of an interpreter where necessary.

16. The report covers various issues including general country background information and specific commentary on the non-Arab Darfuris and military conscription. On the subject of the Appellant's ethnicity Mr Verney concludes:

- That the Appellant was able to correctly identify Berti sub-clans [paragraphs 13-20]

¹ Paragraph 14, witness statement dated 25th October 2013

- He gave “detailed answers” about his tribe [60], for instance giving “competent knowledge” of the Malik, Nazir and Omda [68] and identifying the current Malik or King, and the fact that the last King had died in 2005 [69]
- That the Appellant was able to give details about the harvest and preparation of traditional Darfuri foods [70-79] and in doing so used “very specific local language unknown outside the non-Arab Darfuri community” [73-74]
- The Appellant was able to give detail about the specific traditions that take place over the course of a three day Berti wedding [80-90] including that the groom carries the branch of the *laboub* tree on the third day to represent fertility [86] and that the bride and groom spray each other with milk at the wedding breakfast [89]. He was also able to describe and imitate the various combinations of clapping and leaping involved in traditional wedding dances [90].

17. Mr Verney notes that a Berti who grew up in the city might not be expected to have the same level of knowledge as one who grew up in rural Darfur [64] but despite this finds the Appellant to have a detailed knowledge of Berti culture. In respect of the information provided by the Appellant about food preparation Mr Verney states that he has not met any Sudanese from outside Darfur who would recognise, much less eat, these foods. In respect of the information provided about Berti weddings he notes “it is significant that the interpreter acknowledged that she had not heard of most of these practices and terms. These practices and terms are largely exclusive to the Berti”. He concludes that the Appellant has given detailed and correct answers concerning matters outside the public domain. He coped well with Mr Verney’s frequent digressions from the narrative and gave answers that appeared spontaneous rather than rehearsed [190]; he displayed a “convincing familiarity” with traditions of the Berti tribe [191], and his evidence overall is consistent with Mr Verney’s knowledge of the political situation in Darfur and Sudan.

18. The answers recorded by Mr Verney are to be contrasted with the brief and vague replies about “culture and traditions” given by the Appellant at his asylum interview. Mr McVeety pointed to the respective dates of those meetings and suggested that following refusal the Appellant could have ‘learned’ the information he subsequently gave to Mr Verney. That is always a possibility, and in the case of someone who has already admitted to having lied comprehensively in pursuit of an asylum claim, it is a submission with even more force. I have therefore considered it carefully.

19. The Appellant himself states that he found the questions at the interview hard to respond to because they were “very broad”. I note his evidence that in his culture, questions tend to be specific if they

are requesting specific answers². I would agree that the questions put were broad. The interviewing officer addresses this matter twice during the course of the interview and at neither point asks specific, or follow up, questions to the information offered. For instance at Q91 the interviewing officer said “tell me about Berti tribe, all you can, anything” to which the Appellant replied “what sort of things, customs, traditions?”. When the question was repeated – not clarified – the Appellant said “the Berti are a very peaceful tribe got harmonious (illegible) with other tribes, got customs and traditions”. No follow up question is asked about what those customs and traditions might be. The tone of the interview – given the history – is fairly hostile³ and it gives the impression that the officer was not interested in finding out what the Appellant had to say about the Berti. Again, at Q101 he asks “what can you tell me about the Berti” to which the Appellant replies “got customs and traditions, concerning weddings and (illegible) as well as harvest”. Instead of then being asked to describe harvest for the Berti, the Appellant is next asked about his escape from detention. I find this method of interviewing of little assistance in determining whether the Appellant did in fact know anything about Berti harvest traditions that day.

20. That the Appellant might have learned all he later told Mr Verney is clearly something that Mr Verney himself is very aware of. He states that he bears in mind that there are many Sudanese asylum seekers falsely claiming to be Berti and that he is concerned to identify such claims: “this is especially important in view of the infiltration of the Sudanese community abroad by agents or stooges of the Sudanese government” [paragraphs 96, 128]. He is alert to the possibility that the answers being given have been memorised or learnt [112-117] and as a result he does not use a standard formula to interview subjects: he will digress from the narrative to investigate the subject’s knowledge and manner of speaking. He draws a distinction between “wooden” answers from which the subject cannot expand and “spontaneous, illuminating” responses which contain “small but significant details”. In this way he has on several occasions identified a number of subjects who are making false claims to be Darfuris, including persons not even from Sudan but from West Africa [120]. I note that in his conclusions Mr Verney specifically records that the Appellant coped well with his digressions from a pro-forma and that he gave good levels of detail. He clearly does not consider that the Appellant is faking Berti ethnicity.

21. Overall I found Mr Verney’s report to be extremely helpful. It is prefaced by statements confirming that he understands his role as an

² Paragraph 15, witness statement dated 25th October 2013

³ The Appellant is asked repeatedly to set out in detail “all the lies he told” in 2004. Since the interviewing officer no doubt had access to the relevant documents, and the Appellant had volunteered from the outset that he had lied in that application, these questions have the appearance of an exercise in humiliation. They are entirely pointless; contrary to the assertion of the interviewing officer, they offer no assistance in determining this claim.

expert; in his submissions Mr McVeety expressly accepted that Mr Verney is an expert on Sudan. I accept that Mr Verney has the expertise to comment on the Appellant's ethnicity and that he understands and applies the *Ikarian Reefer* principles. I accept his evidence that he is "concerned to filter out opportunists" [126] and as such accept that he has made an objective assessment of the Appellant. I place a good deal of weight on Mr Verney's reports and its conclusions. He has been at pains to explain how his methodology protects against fraudulent claims, and I accept that he is an objective and expert witness. He has given several examples of matters known to the Appellant that are peculiar to the Berti and are not widely known outside that community.

22. Mr Verney's conclusions are supported by those drawn by Dr Osman. Although Dr Osman is clearly not a native English speaker, and I have not been provided with a transcript of the questions answered by the Appellant during his interview with the organisation, I feel able to place some weight on this evidence. The writer has provided full contact details and since the Respondent has been in possession of this letter since at least October 2013 (when the Appellant's First-tier Tribunal bundle was served) verification checks could have been made. The writer is at pains to point out that he, and the organisation that he represents, do not simply support anyone claiming to be of Berti or Tunjur ethnicity. As the letter explains, such a letter of support will only be forthcoming if the claim of the individual concerned has been examined with care. I have no reason to doubt Dr Osman's evidence that he is satisfied as to the Appellant's claimed ethnicity.

23. The final report relied upon by the Appellant is that of Dr Lord. No issue is taken with Dr Lord's expertise in identifying scars and evaluating them within the context of the Istanbul protocol. Upon examination she has found numerous scars on the Appellant's head, neck, arms, trunk, back and legs. Two scars to the Appellant's head, one on the back of the skull the other on the forehead, are found to be diagnostic of healed lacerations caused by blunt force: this could either have been through hard falls to the floor or being hit with a blunt object. Since falling would mean having fallen twice in different directions, Dr Lord finds the scars to be highly consistent with the Appellant's account of being hit with a stick. The scars to the Appellant's arms and back are diagnostic of healed burns. The pattern indicates that they were caused by a solid hot object and that the Appellant was likely restrained at the time. A scar to his elbow is diagnostic of a healed incised wound; the shape indicates a stab rather than a slash and this is in keeping with his claim to have been stabbed with a bayonet. On the Appellant's leg Dr Lord found a large healed scar on the outer left knee diagnostic of a full thickness skin injury. This is where the Appellant claims to have been shot, and to have subsequently had an operation. Since there is no bullet entry or

exit wound it would appear that the bullet hit the skin at an angle and travelled across the area causing a furrow or tunnel in the skin. The shape has been modified by the operation to remove fragments of the bullet and damaged tissue.

24. Against all of this evidence are three factors. The Respondent relies first on the Appellant's previous willingness to rely. As I have already noted this is a factor of great significance but it cannot be determinative. Mr McVeety and Mr Verney both commented on the fact that there has never been any distinction in asylum case-law between the Tungur and the Berti, so any deceit was pointless. The Appellant himself points out that he could have simply maintained the lie that he was Tungur and would not now find himself in the predicament that he is in; he submits that he now claims to be Berti because that is in fact the truth. Looking at the evidence of ethnicity in isolation that would indeed seem the most likely explanation. Mr Verney has given powerful evidence as to why the Appellant's current claim should be accepted, and that finds support from Dr Osman and the association he represents. I cannot however look at that evidence in isolation. I must assess it in the round with all remaining matters.
25. The second point advanced by the Respondent concerns issues arising under section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. I am obliged by statute to find that the Appellant's previous behaviour in failing to claim asylum in Italy, Greece, France or any of the other European countries that he might have been in before his arrival here, necessarily diminishes his credibility. Doubts must also exist about the way in which the Appellant travelled, since he has given inconsistent account of what passport he used and when. I have given those factors due weight.
26. The final point concerns the overall plausibility of the account. Mr McVeety concentrated his submissions on this. He asked me to consider carefully the Appellant's account in the context of his history of deceit and "asylum shopping". He asked me to find it incredible that the Appellant would be living rough in Greece for approximately ten years but then be able to make his way back to the UK. He submitted that the Appellant has likely returned to the UK because of the economic problems in Greece: he is an economic migrant. The Appellant claims to have married a Sudanese Arab woman in Greece: Mr McVeety questioned why she or her family would agree to marry a penniless African, given the history of enmity between those two population groups. As to the claimed events before the Appellant left Sudan Mr McVeety submitted that they are entirely implausible. The Appellant claims to have been shot for refusing to undertake military service, to have been tortured and detained, but then the authorities offered him treatment. It is said that he managed to escape with relative ease, run away and board a bus all with a gunshot wound to the leg. The Appellant may have many scars to his body, but since it

is accepted that he comes from Sudan, a country with a long-running and brutal conflict, there are many ways in which these scars could have been sustained: they may for instance have been caused during military service. There is no evidence that the Appellant had any of these scars when he first claimed asylum in 2004; they may equally have been sustained on the streets of Greece.

27. I have weighed all of these points in the round with the evidence overall. Mr McVeety is quite correct to point to plausibility issues about the Appellant's account of ill-treatment and escape in Sudan. He is also right to emphasise the section 8 issues and the Appellant's admission to lying in a previous claim. The fact remains that if he is indeed Berti, none of that matters. As it stands I find that the powerful evidence before me of the Appellant's claimed ethnicity prevails over all of these concerns. Having read again the evidence of Dr Osman and Mr Verney I cannot accept that either of these witnesses would have the wool pulled over their eyes. Both have a keen interest in making sure fraudulent claims do not succeed, not least because of well-founded concerns about the Darfuri community in the UK being infiltrated by agents from Khartoum. I find that having weighed the evidence as a whole, the Appellant has discharged the burden of proof in showing himself to be of Berti ethnicity. Mr McVeety accepted that if that was my finding, the appeal should be allowed.

Decisions

28. The determination of the First-tier Tribunal contains an error of law and it is set aside.
29. I re-make the decision in the appeal as follows:
- i) The appeal is allowed on asylum grounds;
 - ii) The Appellant is not entitled to humanitarian protection because he a refugee;
 - iii) The appeal is allowed on human rights grounds.
30. I make no direction for anonymity, since none was requested and I see no reason to make one.

Deputy Upper Tribunal Judge Bruce
4th June 2014