Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00487/2020**

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On the 23rd September 2021	**On the 26th October 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

W I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Shepherd, instructed by Fountain Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Sudan whom, it is now accepted, is a member of the non-Arab Moro/Murawe tribe.

3. The appellant arrived in the United Kingdom on 14 June 2018 and claimed asylum. He claimed that he was at risk on return to Sudan because of his non-Arab ethnic background. He claimed that he had been arrested by the authorities and detained for seven days in prison before being released. After that, the appellant claims that he stayed in two refugee camps, which he referred to as the Arri Refugee Camp and the Yida Refugee Camp.

4. On 3 August 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. Whilst the Secretary of State accepted that the appellant was a victim of modern slavery, she did not accept that the appellant was a member of the non-Arab Moro/Murawi tribe or that he had been detained or lived in two refugee camps as he claimed. As a consequence, the Secretary of State did not accept that the appellant would be at risk of persecution or serious harm on return to Sudan.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a determination dated 23 February 2021, Judge Mehta dismissed the appellant's appeal on all grounds. Whilst the judge accepted that the appellant was from Sudan and a member of the non-Arab Moro/Murawi tribe as he claimed, the judge rejected the appellant's account that he had been detained by the Sudanese authorities in prison or that he had lived on two occasions in refugee camps in Sudan.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal (Judge J K Swaney) on 19 March 2021. However, on 12 May 2021, the Upper Tribunal (UTJ Blundell) granted the appellant permission to appeal on his pleaded Grounds 1 and 2 but refused permission on Ground 3.

7. The judge's reasons for granting permission were as follows:

> "1. The grounds have been significantly revised since permission was refused in the FtT by Judge Swaney. The first ground before me, which contends that the judge erred in failing to consider what was said by the expert, Dr Ille, about the names of refugee camps in which the appellant claimed to have stayed, is arguable. It was arguably relevant, in other words, for the judge to consider the evidence that there is a refugee camp called Taffarri when evaluating the appellant's claim to have been in a camp in that area which he named as 'Arri'. It is arguable that the conclusions at [42] are unsafe as a result of the judge's failure to turn his mind to that evidence.

> 2. Whilst aspects of the second ground might aptly be categorised as disagreement, it is arguable that the judge erred in concluding that there was a discrepancy between what the appellant said in answer to question 58 of the (disputed) interview record and what was said at the hearing.
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> 3. The third ground is not arguable, for essentially the reasons given by Judge Swaney. It is apparent that the judge bore the country guidance squarely in mind. He was cognisant of the risk factors which did or did not apply on the basis of the findings of fact he had reached for. In the event that these findings of fact are sustained, it is not arguable that the risk assessment undertaken on the basis of these findings was in any way deficient."

8. The appeal was listed at the Cardiff Civil Justice Centre on 23 September 2021. The appellant was represented by Ms L Shepherd and the respondent by Mr C Bates. Ms Shepherd relied upon the grounds and a skeleton argument which she developed in her oral submissions. Mr Bates made submissions seeking to uphold the judge's decision.

9. Before turning to the issues raised by Grounds 1 and 2 as they were developed in the representatives' oral submissions, it was accepted by Mr Bates that if the judge's findings in relation to the appellant not being at risk on return to Sudan were not sustainable, then his finding that the appellant could internally relocate at para 52 of his determination also could not be sustained as it did not take into account any risk to the appellant or his background which had been rejected, as a result of the judge's adverse credibility finding, and which were challenged in Grounds 1 and 2. Mr Bates acknowledged, therefore, that if either Grounds 1 or 2 were made out then the judge's decision should be set aside and the decision remade *de novo*.

Discussion

10. Ground 1 relates to the judge's rejection of the appellant's evidence that he had been living, for a time, in a refugee camp which he called the "Arri" refugee camp. The appellant referred to his living in the "Arri" Refugee Camp in the city of Kadugli in 2016 in his asylum interview (e.g. at questions 23 and 24).

11. Mr Bates relied on the fact that Dr Ille was unable to identify a camp called "Arri".

12. In his expert report Dr Ille said this (at p.13):

> "**A camp for internally displaced persons (IDP) in Kadugli called Arri (AIR Q.23) could not be identified;** the large IDP camp there is in Tillow, but another **one is in an area called Taffari** (mentioned in OCHA Sudan Situation Report 4 June 2020, page 12), where there has been an SPLM/A garrison before the present war. It can not be ruled out that the client slightly misheard during his very short stay at the camp." (emphasis in original)

13. The judge said this at para 42:

> "The appellant claimed to have resided in a refugee camp in Kaguli called Arri however this could not be identified and Dr Ille was not able to identify this [camp] either. Dr Ille states that it cannot be ruled out that the appellant slightly misheard

> during his very short stay at the camp. In my judgment this is speculation on the part of Dr Ille and any possible mishearing was not mentioned by the appellant in his evidence….I find that he appellant did not stay in the Arri refugee camp as I am not satisfied that there is a refugee camp in Kadulgi called Arri."

14. Mr Bates also relied upon the fact that the appellant had not given any evidence concerning his mishearing of the name of the camp. It is not surprising that the appellant did not say he had misheard the name of the camp. That was not the appellant's case. The appellant did not suggest that he had not claimed in his interviews to have been in the "Arri" Camp. His claim was that he had stayed in a camp and that is what he heard it was called. Further, I do not accept that there might have been translation difficulties at the interviews may have led to any misrecording of what the appellant said, such that he did not identify one of the camps in which he claimed to stay as "Arri".

15. However, there is, on a common sense view, a potential explanation for the appellant calling the camp "Arri" given in Dr Ille's report. Dr Ille refers to a camp in an area called "Taffari". Self-evidently, and Dr Ille raises this possibility, that name could be misheard to be "Arri". Whilst that was not a matter of expert opinion, and it must always be remembered that the judge found Dr Ille's report to be generally persuasive and to be applied, but it does raise a potential explanation for the appellant's evidence that he stayed in a camp that he thought was called "Arri". UTJ Blundell, in granting permission, considered this was an arguable error of law. In my judgment, the judge, fell into error by failing to grapple with this issue simply referring to the argument raised by Dr Ille as "speculation" in para 42 of his decision.

16. A further issue raised in Ground 1 concerns the Yida (or Aida) Refugee Camp which the judge accepted existed and that the appellant stayed in that camp. However, at para 42 he did not accept, as the appellant had claimed, that the camp was attacked. He did that on the basis that the appellant's account was "externally inconsistent". At para 42 the judge said this:

> "There is evidence of an attack in 2011 however, as fairly acknowledged by Dr Ille, there is no external documentation of attacks on Yida, South Sudan in 2016. … I find that the appellant did stay at the Aida Refugee Camp however this was not attacked."

17. Ms Shepherd submitted that the judge had failed to deal with Dr Ille's view that, although not supporting that attacks took place in 2016 in Yida, there was no "inconsistent" external evidence, there was simply no supporting evidence and at page 11 of his report Dr Ille pointed out that:

> "in general, there are many gaps in the documentation of attacks on the civilian population, and external sources cannot be presumed to give full account of what happened, when and where."

18. Mr Bates submitted that this was a matter for the judge to assess and it was not wrong for him to conclude that he was not satisfied that the attack took place on the Yida Camp in 2016 as the judge found.

19. In my view, Dr Ille's evidence that there was no supporting evidence could not be taken to mean that the attacks did not necessarily take place and certainly the documentation was not "inconsistent" with, such as to contradict, the appellant's claim. Further, it is, perhaps, difficult to follow why the judge accepted that the appellant had stayed in the Aida Refugee Camp but did not accept, as the appellant also claimed, that there had been attacks on that camp in 2016.

20. Nevertheless, I should only conclude that the judge had erred in law if, in this context, the judge either failed properly to take into account all the evidence, or failed to give adequate reasons for his findings or reached an irrational finding on the evidence.

21. The judge specifically referred to the expert's view that there are gaps in the documentation at para 41 of his decision immediately preceding his conclusion in para 42 in relation to the appellant's claim that there was an attack on the Yida Refugee Camp in 2016. Read in context, the judge was not saying, when he used the phrase "externally inconsistent", that the appellant's account of an attack was *contradicted* by the background evidence. It is clear that in context what the judge meant was that the appellant's account found no support in the background evidence or, indeed, in the expert report. That is, indeed, correct. Consequently, I have concluded the judge did not err in law in this regard in finding that the appellant had not, as he claimed, established he been attacked in Yida albeit that the judge accepted that the appellant had been living there.

22. Nevertheless, Ground 1 is, to the extent I have set out above, made out.

23. Turning now to Ground 2, this concerns the judge's finding that he did not accept that the appellant had, as he claimed, been detained in prison by the authorities. The judge's reasons for the finding are set out in para 43 as follows:

> "The appellant claimed that he was arrested by the authorities and detained for seven days and then escaped and went to the refugee camp after opposition forces operating in the area attacked the prison and burnt it down. The appellant's account of his escape from prison is inconsistent. At question 58 of his asylum interview the appellant stated that the opposition had used explosives however when he gave evidence he said that he was inside the prison, could not see outside and could not see how the attack took place other than to say he had heard loud noises and the opposition had burnt the prison down. I do not find this account to be credible. I find that the appellant was not detained by the authorities in prison."

24. Ms Shepherd submitted that there was nothing inconsistent in what the appellant said on the two occasions – he said he had heard "loud noises" and that explosives had been used. The latter was a matter of common sense, given the "loud noises" he had heard.

25. Mr Bates submitted that there was an inconsistency which was a matter for the judge to assess and he was entitled to come to the conclusion that he did.

26. Given that the appellant's claim to be at risk from the Sudanese authorities entails his contention that he had come to their attention, his claimed imprisonment was a significant matter. The judge's reasons for rejecting that aspect of his account are restricted to the single reason given in para 43, namely the inconsistency between the appellant's answer at interview and his evidence at the hearing. In my judgment, and again I bear in mind that I should only interfere with a judge's finding if an error of law is established, the judge's claimed inconsistency cannot rationally bear the weight of undermining the appellant's evidence in this specific matter. In truth, the appellant's one answer was vague, whilst his other answer was more specific as to what had happened to allow him to escape from the prison. In my judgment it was irrational to found the complete rejection of this aspect of the appellant's account on the difference between one vague answer and other evidence from the appellant which was more specific. For these reasons, therefore, I am satisfied that Ground 2 is established.

27. Mr Bates accepted that if Ground 1 or Ground 2 was made out, then the judge's adverse credibility finding could not stand and equally his finding in relation to internal relocation could not stand. I am satisfied that Ground 2 and a significant part of Ground 1 is made out and demonstrate material errors of law made by the judge in reaching his adverse credibility finding. For these reasons, therefore, the judge's adverse credibility finding is legally unsustainable.

Decision

28. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

29. It was common ground between the representatives that if the judge's decision could not stand, the proper disposal of the appeal was to remit it to the First-tier Tribunal for a *de novo* rehearing.

30. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice statement, the appeal is remitted to the First-tier Tribunal for a *de novo* rehearing and before a judge other than Judge Mehta. None of the judge's findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
28 September 2021