Federal Court  Cour fédérale

Date: 20230203

Docket: IMM-887-23

Citation: 2023 FC 165

Toronto, Ontario, February 3, 2023

PRESENT: Madam Justice Go

BETWEEN:

DAUD DUT ATEM

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Daud Dut Atem, seeks judicial review of an Immigration Division [ID] member's [Member] order dated January 19, 2023 for the Applicant's continued detention [Decision] pursuant to section 58 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Decision followed a 30-day detention review held over two sittings on January 16 and 19, 2023 [Detention Review]. The Applicant's immigration detention commenced on

February 7, 2022. The Respondent, the Minister of Public Safety and Emergency Preparedness [Minister], continues to seek the Applicant's detention on the grounds that he is a danger to the public and unlikely to appear for removal. The Respondent seeks to remove the Applicant to South Sudan.

[2] The Applicant submits that the Decision, and the trajectory of his case, exemplifies the tendency for detention reviews to "fall into a self-referential loop of decision-making." The Applicant argues that the Member erred by concluding, based on the evidence, that there is an immigration nexus to his detention. The Applicant also argues that the Member breached their duty of procedural fairness by relying on information remaining undisclosed to the Applicant.

[3] The Respondent argues that the Applicant raises on judicial review the same submissions that have been repeatedly rejected by the ID, and merely seeks to have the Court reweigh the evidence to accept his "self-serving assertion that he is stateless and therefore cannot be removed anywhere." The Respondent denies that there is a breach of procedural fairness.

[4] For the reasons set out below, I dismiss the application.

II. Background

[5] The Applicant was born in Itang, Ethiopia in or around 1988. Before entering Canada in May 2004 as a Convention refugee as a dependant of his mother, the Applicant lived at a refugee camp in Kenya. The Applicant's mother was born in Bor, Sudan, which is now part of South Sudan after the split occurred in 2011.

[6] In 2006, the Applicant began his involvement in criminal activity with his first conviction being recorded in June 2008. Since then, the Applicant has repeatedly found himself entwined with the criminal justice system and landing between the hands of the Royal Canadian Mounted Police in criminal hold, and the Canada Border Services Agency [CBSA] in immigration detention. The Applicant's recorded convictions include offences involving weapons, violence, and trafficking of controlled substances, and he has received 29 convictions relating to non-compliance. The Applicant has served his time for all his convictions.

[7] On October 1, 2012, a deportation order was issued against the Applicant on grounds of serious criminality under paragraph 36(1)(a) of *IRPA*. On July 25, 2014, the Minister of Citizenship and Immigration issued a Danger Opinion against the Applicant pursuant to paragraph 115(2)(a) of *IRPA*.

[8] Related to his current immigration detention, CBSA issued a warrant in November 2021 after the Applicant incurred his most recent charges in October and November of 2021. CBSA's warrant was executed in February 2022 after the Applicant was released from criminal hold.

[9] The Applicant has been in immigration detention since February 7, 2022 at the Calgary Remand Centre. He continues to be held on the grounds that he is a danger to the public and unlikely to appear for removal.

[10] At the Applicant's Detention Review, and all previous detention reviews, the Respondent has stated that they seek to deport the Applicant to South Sudan and are in the process of

obtaining an emergency travel document [ETD] from South Sudan. In maintaining that it is possible to remove the Applicant to South Sudan, the Respondent relied on the fact that in January 2022, Canada successfully obtained travel documents from the South Sudanese Embassy in Washington D.C. for five South Sudanese nationals for the purposes of effectuating removal [Test Cases]. The Respondent has represented these cases as "test cases" because there is no established removal procedure.

[11] The parties disagree on whether the Applicant has always maintained throughout his detention reviews that he is not a national of South Sudan and thus cannot be deported there, or whether this assertion only arose after the CBSA asked the Applicant to submit an ETD application for South Sudan. In any event, the Applicant now alleges he is stateless, and he communicated the same to the Member at the Detention Review.

III. Issues and Standard of Review

[12] There are two main issues raised by the Applicant on judicial review. First, the Applicant argues that the Member breached procedural fairness by relying on undisclosed information relating to the Test Cases in the Decision. Second, the Applicant challenges the Member's finding that there is an immigration nexus to his detention based on the evidence before the ID.

[13] The Applicant asks the Court to vitiate the continued detention order in the Decision. The Applicant provides a lengthy list of conditions upon release that he submits addresses the concerns over the danger he poses to the public based on his criminal history.

[14] The Applicant did not pursue his procedural fairness argument at the hearing. I also note the Respondent's submission that the Applicant withdrew his request for information relating to the Test Cases at the Detention Review. As such, I do not find it necessary to address the Applicant's procedural fairness argument.

[15] The parties agree that the Member's finding on the Applicant's immigration nexus is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[16] Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12–13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88–90, 94 and 133–35.

[17] For a decision to be unreasonable, the Applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

IV. Analysis

[18] The Applicant argues that the Member erred in finding there is an immigration nexus to his detention based on their assessment of the possibility test: *Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130 [*Brown*]. The Applicant makes substantial submissions about how the reasonableness standard is to be applied in the context of detention review decisions based on the relevant legal and factual constraints at play: *Vavilov* at para 105.

[19] The Respondent argues that the ID reasonably found an immigration nexus with the Applicant's detention as there remains a possibility of his removal to South Sudan. The Respondent contends that the Applicant's arguments rely on his self-serving claims regarding his statelessness, which are unsupported by objective evidence and which the Applicant only began disputing at the November detention review, after the South Sudanese authorities agreed to review his ETD application.

[20] In essence, the Applicant's submissions on immigration nexus can be broken down into two parts:

a. Section 241 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] requires the Respondent to determine the Applicant's nationality in order to establish an immigration nexus; and

b. The ID erred in assessing the evidence to find that there was an immigration nexus and that there remained a possibility of the Applicant's removal.

[21] I reject both arguments made by the Applicant.

A. *The ID did not err by finding that section 241 of the IRPR does not require the Minister to determine the Applicant's nationality*

[22] In addition to the statutory scheme governed by subsection 58(1) of the *IRPA* and the factors in section 248 of *IRPR*, the Applicant submits that section 241 of the *IRPR* was a legal constraint on the ID. The Applicant asserts that section 241 requires the Respondent to determine the Applicant's nationality and precludes the possibility of removal where an applicant has no legal status in the identified countries, thereby removing any immigration nexus.

[23] To support this argument, the Applicant relies on the reasoning in *Abdullah v Canada (Citizenship and Immigration)*, 2019 FC 954 at para 23, where the Court stated that section 241 of the *IRPR* is material "in assessing whether an applicant in Canada may be removed to a given country, or any country" in the context of a humanitarian and compassionate [H&C] application:

> […] Where an applicant has no legal status in the identified country and there is no evidence that the country has otherwise authorized the applicant's return, there is no basis to ground an H&C assessment on the potential for removal to that country.

[24] The Applicant further relies on *Abeleira v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1008 [*Abeleira*], another H&C case, where the Court found that the fact

that none of the identified countries would accept the subject made it *prima facie* impossible to deport the subject, stating at para 45:

> […] without knowing the country of removal, an officer cannot consider the conditions in that country in order to determine whether Mr. Abeleira would suffer hardship there. And if an officer cannot consider this, then it is difficult to see how the decision rendered could be deemed reasonable.

[25] The Applicant analogizes the case at bar to *Abeleira* to argue that without knowing the country of removal, the ID cannot consider whether there is a possibility of removal, thereby removing any immigration nexus to the Applicant's detention.

[26] I am not persuaded by the Applicant's submission. I begin my analysis with a review of subsection 241(1) of the *IRPR*, which states:

241 (1) If a removal order is enforced under section 239, the foreign national shall be removed to	**241 (1)** En cas d'exécution forcée, l'étranger est renvoyé vers l'un des pays suivants :
(a) the country from which they came to Canada;	**a)** celui d'où il est arrivé;
(b) the country in which they last permanently resided before coming to Canada;	**b)** celui où il avait sa résidence permanente avant de venir au Canada;
(c) a country of which they are a national or citizen; or	**c)** celui dont il est le citoyen ou le ressortissant;
(d) the country of their birth.	**d)** son pays natal.

[27] This is followed by subsection 241(2), which states:

(2) If none of the countries referred to in subsection (1) is willing to authorize the foreign national to enter, the Minister shall select any country that will authorize entry within a reasonable time and shall remove the foreign national to that country.	**(2)** Si aucun de ces pays ne veut recevoir l'étranger, le ministre choisit tout autre pays disposé à le recevoir dans un délai raisonnable et l'y renvoie.

[28] As the Supreme Court of Canada recalled in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[29] Read in its entire context, including subsection 241(2), I find that subsection 241(1) of *IRPR* does not require the Minister to determine the Applicant's nationality before removing him to South Sudan. While I agree that the Minister shall only remove someone to a country that an individual is connected to by a manner prescribed in subsection 241(1), the actual determination of the individual's citizenship or nationality is not enumerated as a prerequisite for removal.

[30] Indeed, as the Respondent notes, subsection 241(2) makes clear that the Minister shall select ***any*** country that will authorize entry within a reasonable time if none of the countries referred to in subsection 241(1) will authorize the individual's entry. This provision implies that removal can be effected as long as a country will authorize entry, irrespective of nationality.

[31] I also find the cases cited by the Applicant distinguishable on the facts. In those cases, there was either evidence suggesting that the country in question would not accept the applicant, or the evidence established that the applicant has lost their status in the country of removal. Neither of these scenarios apply.

[32] More to the point, those cases do not stand for the proposition that the Minister must first establish the nationality of a deportee before removal can take place. As such, it was not

unreasonable for the ID to find that it was not up to the Minister to determine the Applicant's citizenship. Rather, as the Respondent submits and as the Member noted, the South Sudanese authorities are the sole parties responsible for the determination of the Applicant's status and authorized return.

[33] I need not address the Applicant's argument that the international law regime regarding statelessness acts as a legal constraint on the ID. The same goes for his argument that statelessness can result in situations where an individual is simultaneously unable to prove legal status in Canada and also unwanted abroad, resulting in an uncertainty that creates an indefinite detention. The Applicant's assertion that he is stateless is tenuous.

[34] More critically, as I will address below, there was evidence before the ID that the CBSA is working with the South Sudanese government to facilitate the Applicant's removal. Whether the Applicant is in fact stateless or a citizen of South Sudan is not relevant to the ID's determination of whether removal remains a possibility in light of the evidence.

B. *The ID's finding that there was immigration nexus was reasonably supported by the evidence*

[35] The Applicant relies on the Federal Court of Appeal's [FCA] judgment in *Brown* which makes clear that there "must be a nexus between detention and an immigration purpose": at para 90. The Applicant submits that this mandatory nexus informs the possibility test, which requires the ID to be satisfied that removal is a possibility based on the "existence of objective, credible

facts": *Brown* at para 95. Essentially, the Applicant submits that the ID made an unreasonable determination that there was a nexus to removal because the possibility test was satisfied.

[36] I will begin my analysis with a review of the evidence before the ID at the Detention Review, followed by a summary of the Decision. I will then address the parties' arguments before the Court.

(a) *Evidence before the ID*

[37] At the Detention Review, the Minister presented several documents to support their belief that the Applicant can be removed to South Sudan. These documents included:

- The Applicant's birth certificate, which bears the stamp of the Republic of Sudan [Birth Certificate];
- A partial Confirmation of Permanent Residence for the Applicant, which states that he was born on January 1, 1988, that his mother is a citizen of Sudan, and that he entered Canada with his family on May 18, 2004;
- Notes from the Field Operations Support System about his mother's refugee claim [FOSS Notes], namely that she was interviewed at the Ifo Refugee Camp, where she stayed for 10 years, and that the whereabouts of the Applicant's father are unknown;
- Notes on the Applicant's mother's immigration file [GCMS Notes], which confirm the Applicant and his mother's respective birthplaces, indicate that they are citizens of Sudan and had passports expiring on August 19, 2004, and that their country of refuge was Kenya;
- a handwritten letter dated February 13, 2011 [letter] that the Applicant submitted to Immigration, Refugees and Citizenship Canada (in the context of his impending Danger Opinion), in which he states that he lived in Sudan for four years;

- A November 4, 2022 email from CBSA's Stakeholder Engagement Unit [SEU], with the Applicant's information in the subject line, stating that "GAC advised that the Embassy of South Sudan has received the application and that it is in process"; and
- January 2023 email conversations that do not identify the Applicant's case specifically but that reveal while there has been no update from the Embassy on the processing of travel documents, the South Sudan government confirmed that the Embassy has been authorized to issue travel documents to individuals subject to a removal order to South Sudan.

[38] The Respondent also submitted a statutory declaration by Alexandra Ortiz, an Inland Enforcement Student Assistant with the CBSA, sworn on August 2, 2022 [Ortiz Declaration]. Ms. Ortiz attested that based on a search she conducted of FOSS, GCMS and the National Case Management System, as well as the Applicant's physical file, she found that:

> - [The Applicant] was born in a refugee camp in Ethiopia.
> - The family was assigned a Dinka interpreter upon arrival.
> - [The Applicant]'s mother appears to be from BOR making her South Sudanese (according to [IMM008]). She is now a Canadian Citizen.
> - Does not appear that [the Applicant]'s father ever came to Canada from Sudan. He is listed in the Birth Certificate as Atem Lueth Abuol and as having Sudanese Nationality.
> - [The Applicant] has been listed as South Sudanese on prior [travel document] applications.
> - [The Applicant] is determined to be South Sudanese in his Detention Reviews from 2015.
> - Opinion of the Minister Pursuant lists citizenship as South Sudan as of July 25, 2022.

[39] Before the ID, the Applicant challenged these documents by pointing out, among other issues:

- Two inconsistencies in the Birth Certificate: (1) it misstates his year of birth as 1990, instead of 1988, and (2) it misspells his mother's name;
- The statement in his letter about living in Sudan is inaccurate because his fellow inmate wrote the letter for him, he never told this inmate he lived in Sudan, and he never reviewed the full text of the letter nor received guidance about it, legally or otherwise;
- Inconsistences between the Ortiz Declaration and other documents on file; and
- The fact that some of the Applicant's original immigration documents, including the IMM008 form which Ms. Ortiz alleged to have reviewed, are archived and have been "stripped" by the Minister.

[40] On November 13, 2022, the Applicant's mother swore a statutory declaration for his November 2022 detention review, attesting among other things that the Applicant was born in Ethiopia and grew up in Kenya, where they moved in or around 1991. She confirmed that she was born in Sudan but that the Applicant has never lived there. On the same day, the Applicant's brother swore a statutory declaration stating that him and the Applicant grew up in Kenya and have never lived in Sudan.

(b) *The Member's Findings*

[41] The Member found on a balance of probabilities that the Respondent established grounds for the Applicant's continued detention, namely that he is a danger to the public and unlikely to appear for removal. The Applicant does not take issue with the danger finding in this application.

[42] The Member placed weight on the Respondent's email evidence finding that the January 2023 email disclosures are "case-specific enough to establish that progress is being made with respect to [the Applicant's] removal to South Sudan." The Member also emphasized that the November 4, 2022 email from CBSA's SEU, specific to the Applicant, confirmed that his ETD application is being processed.

[43] The Member rejected the Applicant's counsel's reliance on *Dennis v Canada (Public Safety and Emergency Preparedness)*, 2022 CanLII 91639 (CA IRB) [*Dennis*], where the ID found that "the only evidence before me that indicates that a Liberian travel document will issue is the mere fact that Liberia has not yet said 'no'": at para 31. The Member distinguished *Dennis* because the CBSA in this case has made continued efforts and "significant progress recently" in arranging and effectuating the Applicant's removal.

[44] Counsel for the Applicant also asked the Member to find that the Applicant is not a national of South Sudan by submitting evidence on South Sudanese nationality. The Member noted that the Respondent did not ask the ID to conclude the Applicant's citizenship, but rather seeks to remove him to South Sudan because they believe he is "eligible." The Member asserted that this decision is for the South Sudanese authorities to make and that the ID would need more evidence to assess the South Sudanese legislation, as the Member is not an expert in this area.

[45] The Member also declined to accept the Applicant's mother's evidence regarding her nationality as she "does not have the experience required to interpret for a legislation." The Member noted and accepted evidence that the Applicant's mother was born in Bor. The Member

also opined that despite the inconsistencies, the Birth Certificate is related to the Applicant and that the Applicant does not dispute that his mother was born in Bor, which is now in South Sudan.

[46] Based on this evidence, the Member reviewed a printout provided by the Embassy in Washington which overviews the nationality requirements enumerated in South Sudan's *Nationality Act, 2011,* and *Nationality Regulations, 2011*. The Member noted the following provision, which is section 8 of the *Nationality Act, 2011*:

> A person born before or after this Act has entered into force shall be considered a South Sudanese National by birth if such person meets any of the following requirements –
>
> > (a) any Parents, grandparents or great-grandparents of such a person, on the male or female line, were born in South Sudan;
> >
> > […]

[47] The Member opined that this provision suggests that the Applicant is eligible to be a national by birth. The Member also highlighted section 9 of the *Nationality Act, 2011*, which requires the issuance of a certificate of nationality to "any applicant who is a South Sudanese national by birth", noting that some material requirements are listed. Without making a conclusion on the Applicant's citizenship, the Member found that the Minister is reasonably pursuing removal to South Sudan.

[48] The Member dismissed the Applicant's counsel's concerns about the Ortiz Declaration after finding that her testimony at the Detention Review about the inconsistencies was clear, reiterating that it is not the Minister's job to determine the Applicant's citizenship in any event.

[49] The Member noted that the Respondent was unable to provide information about individuals in similar circumstances as the Applicant that have been removed to South Sudan at the Detention Review. While the Member relied in part on the fact that individuals were successfully removed in January 2022 in the Test Cases to find that there remains a possibility of removal, they found that "even if there is no such person, it does not mean that I would automatically think removal is impossible."

[50] The Member reiterated at various points of the Decision that removal is a complicated process that takes time, and found that the Respondent is still working within the ambit of subsection 241(1) of the *IRPR* to enforce the Applicant's removal to South Sudan. The Member concluded accordingly that, at this time, there remains an immigration nexus to the Applicant's continued detention.

(c) *Analysis of the Parties' Submissions before this Court*

[51] Before this Court, the Applicant raised a number of arguments to challenge the Decision, many of which were similar to the ones he made before the ID: the inconsistencies in the Birth Certificate, being Dinka and Christian does not mean the Applicant is Sudanese, the Applicant is almost illiterate and therefore did not know what his fellow inmate wrote in the letter, and the Minister is to blame for stripping the Applicant's refugee and immigration status documentation.

[52] I find that many of the Applicant's arguments amount to a disagreement with the Member's assessment of the evidence.

[53] I also reject the Applicant's argument that the ID relied solely on documents "created" by the Minister. The Minister did not "create" the Birth Certificate; it was provided to the crown prosecutor during one of the Applicant's criminal proceedings, presumably by the Applicant himself. As well, while the Applicant is now trying to distance himself from the letter, that document was also not created by the Minister, but by a fellow inmate at the Applicant's behest.

[54] Further, I reject the Applicant's submission that the Minister had 11 years to find evidence that he is South Sudanese since the issuance of his deportation order in 2012, and yet has failed to do so. As the Respondent submits, the Applicant came as a refugee and could not be removed until the Danger Opinion was issued in 2014. In the ensuing years, there was an administrative deferral of removal to South Sudan and until recently, the South Sudanese government was non-responsive to Canada's request for removals to their country.

[55] As the Respondent also submits, the Applicant has not challenged the objective evidence that his mother was born in Bor, now South Sudan, that his family's ethnicity is Dinka and Christian or that his family came to Canada as Sudanese refugees. Such evidence, along with the South Sudanese authorities' acknowledged receipt of the Applicant's ETD application and confirmation that the application will be reviewed, reasonably supported the ID's conclusion that removal to South Sudan remains a possibility.

[56] The Applicant also argues that the Member inappropriately distinguished *Dennis* and failed to explain why the Applicant and his mother's testimony and his brother's declaration were insufficient. The Applicant also submits that the Member failed to assess the concerns

raised by the Respondent's January 2023 email disclosures when distinguishing this case from *Dennis*. The Applicant suggests that these emails demonstrate that there is an "impasse" in the process of obtaining travel documents from the Embassy, and points to excerpts of these emails that claim that the Embassy has received (unofficial) authorization from the South Sudanese government to issue travel documents but has been unresponsive to Canada.

[57] I find again that the Applicant is seeking for a reweighing of the evidence. I agree with the Respondent that it was reasonable for the ID to rely on the November 2022 email exchange to conclude that the Applicant's removal remains possible, as it indicated that the South Sudanese authorities received the Applicant's ETD application and confirmed that it will be reviewed. The Respondent submits, and I agree, that this evidence distinguishes this case from *Dennis*, as the basis for there being a possibility of removal is beyond merely the fact that the foreign nation has not said no. I will also add that unlike Mr. Dennis who presented "ample evidence" indicating that he is no longer a citizen of Liberia, the Applicant in this case presented no evidence, other than his bald assertion that he is stateless.

[58] The Applicant also argues that the Member unreasonably refused to engage with the Applicant's submissions on the South Sudanese legislation, contrary to the member's decision in *Dennis*. In doing so, the Applicant takes issue with the Member stating they required expert evidence yet simultaneously relying on the Respondent's position regarding the legislation to find that the Applicant would be eligible for citizenship in South Sudan. The Applicant submits that the Member engaged in circular reasoning by relying on the Respondent's beliefs.

[59] In addition, the Applicant takes issue with the Member requiring further evidence on South Sudanese legislation, pointing out that he did submit as evidence a Field Report by Refugees International [Field Report], which is cited in a UK Border Agency Country of Origin Report on the Republic of Sudan [UK COI Report] that the Member specifically referred to at the January 16 Detention Review. The Applicant highlights the portion of the Field Report stating that South Sudan is taking a strict approach to the implementation of the *Nationality Act, 2011*, and asserts that it was unreasonable for the Member to require further evidence about this legislation while being alive to this evidence before them.

[60] Given the foregoing, the Applicant takes further issue with the Member then going ahead to interpret section 8 of the *Nationality Act, 2011*. The Applicant also notes that the Member's reference to section 9 of the *Nationality Act, 2011* was cherry-picked, as the Member ignored the actual material requirements enumerated in the *Nationality Regulations, 2011* that section 9 refers to. As such, the Applicant argues that the Member ignored relevant evidence on the record.

[61] I note, first of all, the Field Report is dated May 29, 2012, and the UK COI Report is dated August 1, 2012; both were created just one year after South Sudan became a country. Further, the portion of the UK COI Report that the Member referred to at the Detention Review pertained to the "impression that issuing emergency travel documents may not require as much evidence as a nationality application."

[62] I also agree with the Respondent that it was reasonable for the Member to find that they could not delve into the interpretation of foreign law to determine the Applicant's citizenship or

lack thereof. Finally, as I find that the Minister is not required to determine the Applicant's citizenship, I also conclude the ID did not need to analyse the procedural requirements for the Applicant to obtain citizenship in South Sudan enumerated in the *Nationality Regulations, 2011*.

[63] In conclusion, based on the evidence before them, I find the Member reasonably concluded there was an immigration nexus and that removal remained a possibility at the time of the Detention Review.

C. *Other issues*

[64] The Applicant also makes submissions with respect to this Court's jurisdiction to grant the remedy of *habeas corpus*. Based on my findings above, I need not address these submissions.

[65] However, I acknowledge that the Applicant has been detained since February 7, 2022. The possibility of his removal will necessarily be assessed as long as the Applicant remains in detention. Sooner rather than later, his drawn-out detention will call into question the possibility of his removal, and with it, whether his detention has become one of indefinite length.

[66] I also note that the Applicant is currently detained in a remand centre for individuals facing criminal charges, as opposed to an immigration detention centre. The conditions of detention are far from ideal to say the least. The Applicant raised concerns about the lack of access to medical treatment, and has yet to receive a proper psychiatric assessment despite receiving provisional diagnoses of depression and Post-Traumatic Stress Disorder. All of these

factors, in my view, warrant a careful weighing in future detention reviews to assess whether and when alternatives to detention should be considered.

V. Conclusion

[67] The application for judicial review is dismissed.

[68] There is no question for certification.

JUDGMENT in IMM-887-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-887-23
STYLE OF CAUSE:	DAUD DUT ATEM v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 1, 2023
JUDGMENT AND REASONS:	GO J.
DATED:	FEBRUARY 3, 2023

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