First-tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07050/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 February 2015	**On 31 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MAA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Watterson instructed by Caveat Solicitors
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sudan born on 20 June 1996 and he appealed against a decision dated 20 August 2014 to remove him from the United Kingdom following a

refusal to grant him asylum, humanitarian protection and protection under the European Convention.

2. He claims to have left Sudan in June 2012 travelling initially to Libya and from Libya by boat to Italy. He then travelled from Italy to Calais in France by train and entered the UK on 29 November 2013 on a lorry. He applied for asylum on 3 December 2013. His appeal was heard by Judge of the First-tier Tribunal A Khawar on 12 November 2014 who dismissed his appeal on all grounds on 27 November 2014.

3. The appellant made an application for permission to appeal on the basis that the judge had erred in fact and recorded at paragraph 30 that the appellant had managed to save £700 to pay for his trip from Sudan to Libya. The judge failed to consider that one Sudanese pound was equivalent to 0.1116 sterling and would have come to a different conclusion having been satisfied at paragraph 21 that the appellant had provided a broadly consistent account.

4. The appellant would not have been able to rent a room with that amount in Sudan so he was destitute and lived in the streets thereby putting him at risk of being arrested sooner or later because of his skin colour and because he would have no home or family to return to in Sudan.

5. A second ground was that the judge erred in concluding that the appellant was either sleeping or living in the market which appeared to have been a matter of choice. The appellant in fact saved the equivalent of £80 and the money could only take the appellant to Libya by car. The judge would have come to a different conclusion had he considered the series of events that made the appellant leave Sudan for Libya. If the judge had taken into account the appellant's fears because of his skin colour his destitution and his arrest cumulatively he would have reached the threshold as it was the fear that made him leave Sudan.

6. In ground 3 the judge failed to consider the fact that the appellant stated that he was moving from place to place, sleeping in markets to avoid having been caught and was in constant fear which made him seek a way of escape to Sudan or Libya.

7. The judge noted in paragraph 21:

> "*Having carefully considered all the evidence I am satisfied the appellant has provided a broadly consistent account on each occasion that he has been questioned. In addition his account is consistent with objective evidence in relation to the treatment/discrimination meted out to Darfurian blacks*."

8. The appellant's series of treatment, discrimination when taken cumulatively was capable of meeting the threshold that made the appellant seek refuge outside Sudan.

9. A Rule 24 response was submitted contending that whether the appellant saved £700 or £80 made no material impact on the outcome of the appeal. The fact is that the judge concluded that the appellant was able to save enough money to leave Sudan

and left for economic betterment. There was no history of persecution and there was an option for the appellant to relocate.

10. At the hearing before me Miss Watterson made a preliminary application to expand her grounds of appeal and to rely on case law, specifically **MM (Darfuri) Sudan CG [2015] UKUT 00010 (IAC)**. She pointed to the conclusion of that case to support her contention that this case should be considered in the light of the appellant being *perceived* as a non-Arab Darfuri. I cannot accept a proposition that the judge should have considered a country guidance case promulgated after he had promulgated his own case. It was Miss Watterson's contention that there was a racial element to the Darfuri conflict. The judge had perceived him as a black Darfuri and that he was at risk of arrest. The fact she contended was that the appellant looked like someone from an African tribe. Indeed he was arrested in 2006 as being associated with the JEM and she referred me to Country of Origin Information to show that the appellant was one of the Arab tribes associated with the opposition of government.

11. Ms Watterson pointed to Country of Origin Information Report at 16.35 and stated it was not quite as simple as him just not falling within the non-Arab Darfuri category but there was a racial element and that he would be perceived as a dark-skinned Darfuri. I asked what evidence was presented to the First Tier Tribunal of persecution of rather than discrimination towards the appellant, because of his colour, and was not pointed to evidence in that regard.

12. I do not accept the amendment to that ground. The ground was put on the basis that the appellant received a series of treatment or discrimination and when taken cumulatively was capable of meeting the threshold. Even if I had allowed that ground to be expanded as Mr Parkinson pointed out there was nothing in the evidence to indicate that absent the sweep of arrests of many, that non-Arab Darfurians by virtue of their dark skins were at real risk of persecution.

13. Miss Watterson also stated that the appellant had been moved from place to place to avoid being caught by the police but I note that the judge specifically recorded the account which he accepted that he was arrested by the army in 2008 "along with others" and although he was accused by the army of being a supporter of Khalil Ibrahim "he denied such accusations and eventually the army released him".

14. The judge also found that at 28 the appellant's "only claim is that he was arrested twice by the police during this five year period [2008 to June 2013] but does not claim to have been ill-treated". The judge found that the appellant had stated that he was released by the army in 2008 because he was not a supporter of JEM.

15. **AA (non-Arab Darfuri – relocation) Sudan CG [2009] UKAIT 00056** confirmed that non-Arab Darfuri are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. The fact is that the appellant is from the Taisha tribe which is in fact an Arab tribe. The judge recorded that he had been arrested and mistaken as a JEM supporter but considered that the any further arrest

would be remote and that was not satisfied that simply by virtue of his dark skin and that he may be destitute that would happen again [33].

16. The judge accepted that there was racial prejudice meted out to individuals with the appellant's skin colour but clearly found that the authorities had come into contact with the appellant and had not considered him to be linked to the JEM. The judge found at [29] that the appellant had faced the discrimination only. The judge confirmed he considered the objective evidence did not reach the threshold either that of inhuman or degrading treatment which as Mr Parkinson pointed out in this instance would be a similar threshold to that of claiming asylum.

17. I therefore do not allow Miss Watterson to amend the grounds of appeal. The appellant confirmed that he was from the Taisha tribe which is an Arab Darfuri tribe and clearly the authorities had accepted this. Had they not done so despite the colour of his skin, on the basis of the country guidance he would have been at risk of persecution which on the evidence accepted by the judge was not the case.

18. The Operational Guidance Note August 2012 at 3.9.13 confirmed that issues of ethnicity and identity had become increasingly blurred and to that end I do not find that there was evidence placed before the judge that the appellant would be primarily identified as African or Arab, albeit that the judge referred to the appellant as a black Darfuri. The clear conclusion of the judge was that the authorities did not find the appellant to be identified with the insurgents particularly as he was released on three occasions. This was a finding open to the judge.

19. It was further stated at 3.10.4 that not all African tribes support the rebels and not all Arab tribes support the government:

> "*The various tribes that have been the object of attacks and killings.... do not appear to make up ethnic groups distinct from the ethnic group to which persons or militias that attack them belong. They speak the same language, Arabic and embrace the same religion, Muslim. In addition, also due to the high measure of inter marriage they can hardly be distinguished in their outward physical appearance from the members of tribes that allegedly attack them. Furthermore, inter-marriage and coexistence in both social and economic terms have over the years tended to blur the distinction between the groups. Apparently, the sedentary and nomadic character of the groups constitutes one of the main distinctions between them. It is also notable that members of the African tribes speak their own dialect in addition to Arabic, while members of Arab tribes only speak Arabic*."

20. Miss Watterson referred to at 21.12 of the Republic of Sudan Country of Origin Information Report September 2012 as "the cattle-herding Baggara of South Darfur which included the Taisha". This stated that the large Baggara tribes generally opposed government policies towards Darfur but I note that this extract still referred to the Taisha (that of the appellant) as being one of the Darfur Arab groups and also confirmed that there were blurred communities within the Abbala and Baggara. I do not accept that this is evidence that there would be persecution or that it undermines the judge's findings. It was accepted that there was stigmatisation but this is not

persecution, and the judge took the appellant's case at its highest and took into account his lifestyle and what had happened to him whilst in Sudan overall in the decision and particularly at [28] [29] and [30]. I am not persuaded that the judge has erred in this regard.

21. Turning to ground 1 and 2 which were inter-linked the judge recorded in the evidence and the Record of Proceedings that the appellant had saved £700. This was taken in oral evidence and the witness statement did not make mention of this. I do not find therefore that it can be shown that the judge has erred in this regard. Further, it is clear that the judge qualified his consideration of this money at [30] when he stated that the appellant had managed to save essentially to pay for his trip from Sudan to Libya and that this was a journey which took six days by car. The judge had in mind the amount of money that would allow the appellant to leave Sudan. The judge found that he saved up his money with a view to travelling abroad and that this was what the money was used for. Indeed the judge found that his reason for travelling to Libya appeared to be for economic reasons and not with a view to escaping ill-treatment. I find that there is no error in this regard. The judge found essentially that the money saved was money to assist his travel and this could have been directed towards accommodation.

22. With respect to ground 2, the judge found he was credible but found he was not perceived by the authorities as working with the JEM because of his ability to live for a period of 5 years until his departure without suffering ill treatment [28] and, in line with the country guidance, he found that non-Arabs from Darfur were not at risk. The judge incorporated into his reasoning the events that had occurred to the appellant during his life in Sudan but found that he was arrested, not only his skin colour, but also because of his homelessness and that he was released. The judge found this treatment, in the particular circumstances, essentially amounted to discrimination not persecution or a breach of Article 3.

23. I am not persuaded that the judge has made an error in his assessment or cumulative assessment such that the appellant was at risk on return. I find that there is no error of law which would make a material difference to the outcome and the decision shall stand.

Direction Regarding Anonymity – Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge Rimington