Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04983/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 February 2016	**On 14 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

H M A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F Allen, Counsel, instructed by Warnapala and Co
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge A J Parker (the judge), promulgated on 21 September 2015, in which he dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 6 March 2015, refusing to vary leave to remain

and to remove the Appellant from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Appellant is a national of Sudan. He arrived in this country as a minor and claimed asylum. His claim was first rejected by the Respondent on 12 December 2013, but he was granted Discretionary Leave to Remain in line with the policy on unaccompanied child asylum applicants. At this stage the Respondent accepted that the Appellant's family had been killed by the Janjaweed. However, it was said that the Appellant, as a member of an Arab tribe from the Darfur region, could relocate to Khartoum.

3. An application for further leave to remain was made on 15 September 2014, based in essence upon a claimed risk on return to Sudan. In rejecting the claim once more, the Respondent concluded that the Appellant could relocate. In addition, it was said that the Appellant's Article 8 claim failed.

The hearing before the judge

4. There was no dispute as to the Appellant's claim that his family had been killed (as had been conceded by the Respondent previously). It is at least implicit in the judge's decision that there would be a risk of persecution in the Appellant's area. There has never been a suggestion by the Respondent to the contrary. Both representatives had been agreed that the focus for the judge was the issue of internal relocation (paragraph 21).

5. The judge correctly directed himself to the leading cases of AH (Sudan) [2007] UKHL 49 and Januzi [2006] UKHL 5. He then finds that the Appellant would not be specifically targeted by the Janjaweed elsewhere in the country (paragraph 24). The country guidance decisions of HGMO (relocation to Khartoum) Sudan CG [2006] UKAIT 00062 and AA (non-Arab Dafuris – relocation) Sudan CG [2009] UKAIT 00056 are discussed at paragraphs 25 to 28. Paragraph 29 contains consideration of a number of factors related to internal relocation, including linguistic ability, health, age, education, and the Appellant's actual ethnicity. In the next paragraph the judge concludes that there was a lack of country evidence showing that members of the Appellant's tribe were targeted in Khartoum. In dealing with the expert report of Dr Samuel Bekalo and the submissions made thereon, the judge finds the suggestion that the Appellant would be risk in Khartoum as a person of dark skin colour from the Mesiri tribe to be unsubstantiated and weak (paragraphs 31 and 34). In conclusion, the judge finds that the Appellant could reasonably relocate to Khartoum (paragraph 33).

6. The Article 8 claim is rejected in brief terms at paragraphs 44 to 46.

The grounds of appeal and grant of permission

7. The core issue in the grounds is that the judge failed to adequately deal with the evidence and submission that the Appellant would be at risk in Khartoum because of his skin colour and the perception created as a result. Related to this, it is said that there is a failure to address the expert report. Two additional points assert that the judge conflated a risk in Khartoum with the question of reasonableness, and that there was an error in the application of relevant country guidance cases. The findings on risk from the Janjaweed and the Article 8 claim are not challenged.

8. Permission to appeal was refused by the First-tier Tribunal but granted by Upper Tribunal Judge Gill on 12 November 2015. In a detailed decision, Judge Gill sets out very clearly the somewhat tentative basis upon which permission was being granted. In respect of the expert report (upon which the core ground of appeal rests in large part), she indicates a number of points that the Appellant would have to address at the error of law hearing. These include: identification of the expert's conclusion that any black Arab Darfuri is reasonably likely to be perceived as a non-Arab Darfuri; whether the expert had seen the Appellant; whether he knew that the Appellant spoke Arabic; whether he knew if the Appellant spoke non-Arab Darfuri languages.

The hearing before me

9. Ms Allen submitted that the issue of skin colour went both to risk and internal relocation in Khartoum. She accepted that the expert had not been instructed to consider skin colour, but the point arose in the report and so the submission was made to the judge by the Appellant's representative (not Ms Allen). She submitted that the factors in paragraph 29 were not assessed as part of a proper consideration of internal relocation. It was apparent from the decision that risk and reasonableness had been conflated. Two factors relevant to relocation had been left out of account in any event: the Appellant's age when he left Sudan, and the time he had spent away from that country. The expert had said that the Appellant's tribe may be seen as sympathetic to the non-Arab Darfuris, and it would not be right to expect the Appellant to explain that he was Mesiri. In respect of the judge's rejection of the expert report, paragraph 34 was inadequate. In terms of sources in the report, Ms Allen submitted that the references at the top of page 5 related to the previous sections of the document, including (I presume) those dealing with skin colour and ethnic perceptions. It was accepted that that was no country information before the judge relating to skin colour and the Mesiri tribe.

10. Ms Willocks-Briscoe submitted that the judge dealt with the expert report adequately. It was a fact that the Appellant was from the Mesiri tribe. The

factors in paragraph 29 were all relevant, and the judge was aware of the Appellant's past movements.

Decision on error of law

11. Having given a good deal of thought to this appeal, I find that there are no material errors of law in the judge's decision. My reasons foe this are as follows.

The expert report

12. The expert report was clearly the central evidential plank upon which the Appellant's case before the judge was founded. The existence of risk or other relevant discrimination/prejudice in Khartoum could only have been potentially established on the back of the report, given that there was no country information available and the case-law was clearly against the Appellant.

13. The judge rejects the two arguments predicated upon the report in fairly short terms. In paragraph 31 it is said that, "the conclusion that because he [the Appellant] is an Arab he would be at risk is not supported in my view with any credible evidence." At paragraph 34 it is said that, "the expert report as to why an Arab Mesiri tribe member would be at risk in Khartoum is weak and unsupported by credible evidence." Is this adequate when the evidence and decision are taken as a whole? In my view the answer is Yes.

14. First, the expert was not in fact asked to address the points relied upon by the Appellant in submissions to the judge. In fairness to the expert, it is perhaps unsurprising therefore that his report is not as clear or thorough as it otherwise might have been. Whilst not fatal to the evidential value of the report, the limited scope of the instructions was always going to be problematic.

15. Second, whilst the judge refers to the Appellant's membership of the Mesiri tribe at several points, it is clear enough that he also had in mind the issue of skin colour (see paragraph 31). Thus, when the findings and conclusions are read in the round, the judge appreciated the way in which the Appellant's case was being put.

16. Third, there was and is no dispute that the Appellant's tribe is of Arab designation. It was obviously going to require clear, properly sourced expert opinion to show (even on the lower standard) that this Appellant would be perceived in a materially negative way by virtue of skin colour and/or tribal membership. Yet what is said in the report about skin colour is, with respect, less than clear:

> "With regard to physical features, the tribes that are categorised as Arabs tended or consider themselves to have a relatively lighter complexions, while the non-Arabs were described as 'black'…Although describing people by the colour of their skin is locally common, it sounds to me to have some tribal racial connotation that aggravate tensions in the socio-dynamic."

17. In addition to the lack of clarity, nothing is said about whether the Appellant's tribe are generally of dark skin colour and whether, if they are, this had any effect on their perception by the authorities for this reason. There is no indication that the expert had seen a picture of the Appellant. There is nothing in the report or elsewhere to suggest that the Appellant speaks a non-Arab Darfuri language. Even leaving aside the question of sources, there were considerable deficiencies in the evidence.

18. Turning to the second limb of the argument (namely that the entire Mesiri tribe may be perceived adversely), the report states:

> " More recently, the Darfur and wider Sudanese conflicts appear to force other minority non-Arabs as Arab tribes (e.g. Ben Hussine, Meseria) to be scaked [sic] into the growing widespread conflict. This has been particularly the case in the past five years or so."

19. As has been mentioned previously, there was no country information before the judge to support this contention. The most recent case on Sudan from the Upper Tribunal says nothing about Arab tribes being targeted or otherwise adversely perceived (see MM [2015] UKUT 00010 (IAC)). In light of this, any tribunal of fact can reasonably expect the author of a report in which opinions of the kind cited above are made to provide at least some sources upon which the opinions are based (or to explain why opinions are unsourced).

20. Ms Allen and the grounds of appeal have both suggested that the opinions are properly sourced. I have checked (as I am entitled to) all the sources cited at the top of page 5 of the report. There is nothing in any of them even begin to suggest that skin colour and/or membership of the Mesiri tribe have led to risks, adverse perception, or indeed any other relevant outcome. It is right that there are continuing human rights abuses in Sudan, but that was never going to be sufficient to make out the Appellant's case as put to the judge.

21. I also note that in the section of the report on internal relocation, nothing is said about skin colour or membership of the Mesiri tribe.

22. Taking all of the above into account, the judge was entitled to reject the expert opinion in the manner that he did.

23. In turn, the question of whether the Appellant would have to explain his ethnic origins to others simply did not arise as a material issue.

The risk/internal relocation issue

24. I acknowledge that it appears in certain passages of the decision that the judge has conflated the issues of risk and internal relocation. Clearly, they are not one and the same. However, taking the decision in the round and having regard to my conclusions on the expert report, above, there is no material error here.

25. It seems to me as though the claimed inability of the Appellant to relocate to Khartoum was based primarily upon the expert report: there was a risk in the capital because of skin colour and or membership of the Mesiri tribe. The secondary argument would have been (I assume) that internal relocation was unreasonable largely for the same reasons, albeit that actual risk did not have to be shown. Given that the judge was entitled to reject the expert evidence, the central plank of the Appellant's arguments therefore fell away. In my view, this explains the judge's apparent conflation of risk and internal relocation in the first sentence of paragraph 33. In effect he is saying that once the skin colour/tribal membership issue fails (as he found it did), relocation was otherwise reasonable.

26. My view on this is supported by three additional points. First, it is clear that the judge had in mind the relevant cases on internal relocation, including the material parts of the country guidance decisions (AH (Sudan), Januzi, HGMO, and AA). Second, the judge was cognisant of the fact that country guidance did not suggest that generally speaking, relocation to Khartoum was unreasonable for Arab Darfuris. Third, the various factors set out in paragraph 29 were all clearly relevant to the relocation issue.

27. Ms Allen submits that two factors relevant to relocation were omitted by the judge: the age the Appellant left Sudan and the time he had spent away. It is right that these two matters are not specifically mentioned in paragraph 29. Notwithstanding this, obstacles exist in the Appellant's path. First, the point is not raised in the grounds of appeal. Second, the judge was aware of the Appellant's past movements (paragraph 9). Third, having looked at the surviving guidance in HGMO and what is said in AA and MM, there is nothing in the Tribunal's conclusions to indicate that time away or return from the United Kingdom would, in themselves, present material problems in relation to the reasonableness of relocation. Fourth, as far as I can see there was no country evidence before the judge indicating material problems as a result of these factors (for example, whether a lack of family ties would cause difficulties, and such like). Fifth, I have not been told about any submissions made to the judge on how the two factors would have had a material impact on relocation.

28. The judge did not err. Even if he did, this was not material, taking all the circumstances of the case into account.

Misapplication of country guidance

29. It is asserted in the grounds that the judge erred in his application of HGMO. This is misconceived. I cannot see in what way any material misapplication has occurred. Nothing more was said about this at the hearing before me. There is no error here.

Summary

30. The Appellant's appeal fails on all grounds. It was open to the judge to reach the decision he did, and for the reasons provided.

Anonymity

31. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

Signed Date: 3 March 2016

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date: 3 March 2016

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal