



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

Appeal Number: PA/07505/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 1 May 2018**

**Decision & Reasons  
Promulgated  
On 08 May 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[M A]**

**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Ms Marwaha, instructed by Terence Ray, Solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, [MA], was born on [ ] 1969 and is a female citizen of Sudan. The appellant appealed against the decision of the Secretary of State to refuse her protection claim dated 30 June 2017. The First-tier Tribunal (Judge O'Malley) in a decision promulgated on 27 February 2018, allowed the appeal on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The judge did not believe the appellant's account of past events in Sudan. However, at [81] he found that, “the point on which I do conclude that the appellant meets the lower standard [of proof] is on her membership of the Bergid tribe”. The judge found that the appellant had given ‘convincing evidence’ at her interview with the Secretary of State’s officers and he also gave weight to a letter from Omar Dawelbite, Secretary General of the Darfur Union. The judge has quoted at length from that letter at [52]. The judge relied on the existing country guidance case of *MM (Darfuris) Sudan CG 2015 UKUT 00010 (IAC)* and accordingly concluded that, as a non-Arab Darfuri, the appellant was entitled to refugee status [82]. The judge concluded that the appellant had exaggerated her claim and had told “untruths” but, given her ethnicity and tribal membership, “her untruths [do not] take her outside the protection of the [Refugee] Convention”.
3. There are two grounds of appeal. First, the Secretary of State challenges the decision on the basis that the judge refused to depart from existing country guidance, notwithstanding the existence of evidence (Country Policy and Information Note: August 2017) which indicated that only non-Arab Darfuris with a political profile remained at risk in Sudan. The Secretary of State acknowledges that the judge declined to depart from existing country guidance but argues that he erred in law by failing to do so. Secondly, the Secretary of State asserts that the judge was inconsistent in finding the appellant's account of past events in Sudan to be fabricated whilst accepting her tribal membership. The judge should have found that the appellant had never been at risk in Sudan and that she had there lived a “life of relative wealth and comfort”. The Secretary of State also argues that there are a million Darfuris living in Khartoum, a city having an overall population of 8,000,000.
4. Ms Marwaha, for the appellant, submitted that the CPIN of August 2017 did not unequivocally conclude that it was safe for non-Arab Darfuris in Sudan. Indeed, the note provided little evidence of improvement in circumstances. Moreover, the sources upon which the CPIN had been based pre-dated the decision of the Upper Tribunal in *MM*. In the light of that fact, the judge had been entitled to continue to rely on the existing country guidance and not to depart from it. I agree with that submission and for the reason given by Ms Marwaha. Whilst I acknowledge that changing circumstances can render country guidance out of date, the First-tier Tribunal Judge must have cogent reasons based on evidence for departing from it. There is nothing in the August 2017 CPIN which would compel a judge to depart from the country guidance of *MM* whilst I agree with Ms Marwaha that the fact that the CPIN is based on sources pre-dating the promulgation of *MM* would have been significant in influencing the judge’s decision not to depart from the country guidance.
5. As regard the second ground of appeal, I find that the judge has given cogent and clear reasons for finding that the appellant was a member of the Bergid tribe, notwithstanding the fact that she had given exaggerated and untruthful evidence. The judge was entitled to place weight on the

letter from Mr Dawelbite and on the extensive answers (see questions 173-191) regarding her ethnicity put to the appellant at her asylum interview. The judge was not obliged to disbelieve the appellant's claimed ethnicity simply because he did not believe her account of past events. Indeed, I am aware that, in a great many appeals, the Secretary of State accepts the nationality and ethnicity of an appellant whilst disbelieving every other aspect of his or her claim.

6. In the circumstances, this appeal is dismissed.

**Notice of Decision**

7. This appeal is dismissed.

8. No anonymity direction is made.

Signed  
2018

Date 8 May

Upper Tribunal Judge Lane