



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08895/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 2nd November 2018

Decision & Reasons Promulgated
On 19th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR H M H A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Patel (Solicitor)
For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Boylan-Kemp MBE, promulgated on 23rd January 2018, following a hearing at Birmingham Sheldon Court on 22nd December 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sudan, and was born on 1st January 1988. He appealed against the decision of the Respondent Secretary of State dated 25th August

2017 refusing his claim for asylum and humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a member of the Tama tribe, which is a non-Arab tribe, originating from Darfur. Whilst working in a tyre shop in October 2015, he was arrested and detained due to the authorities' suspicion that he was supporting the opposition. The Appellant, however, has no political involvement. He was detained for ten days, and then released on licence and required to report back and sign on a weekly basis. He left five days later, going to Libya, and from there onwards to Italy, before coming to the UK to claim asylum. The Appellant has family still living in Sudan, namely, his mother, four brothers, and one sister and his wife. He has been in contact with them by telephone.
4. The Respondent accepts the Appellant's identity, his nationality, and his ethnicity. His claim that he was detained by the authorities, or that they continued to show an interest in him, was rejected, because he had not been involved in any opposition groups, and had not been politically active in Sudan. Moreover, the new country guidance shows that if the authorities have no specific interest in the Appellant, then he would be able to relocate to Khartoum, and there will be no further risk to impute his ethnicity.

The Judge's Decision

5. The judge began by observing that the Appellant's claim was based upon his imputed political opinion and his race. The judge had regard to the expert report from Mr Verney (at paragraph 56 of the report) where it is said that, "the Home Office has not understood that ethnic identity alone is enough in the eyes of the Sudanese security apparatus to merit an accusation of supporting the 'rebel' opposition." She recorded Mr Verney as having concluded that the Respondent's refusal letter "demonstrates a serious absence of comprehension of the methods and purposes of the Sudanese security apparatus" (paragraph 68 of the report). The judge also recorded Mr Verney as stating that, "the authorities do not care if the detainee is seriously a member of the opposition, or simply likely to be on the basis of racist assumptions" (paragraph 72 of the report). She took all of this into account (at paragraph 19 of the determination). However, the judge did not find the Appellant's evidence to be credible (paragraph 20). Therefore the question was whether the Appellant could be returned and find internal relocation in Sudan. Consideration was given by the judge to a number of leading authorities (paragraphs 24 to 26) in relation to non-Arab Darfuris in Sudan. In the end, however, the judge was swayed by the CPIN; Sudan: Non-Arab Darfuris of August 2017. This reflected and analysed a number of government and other agency reports since 2014, and which considered whether those of non-Arab Darfuri ethnicity would face persecution, or whether in fact it was simply discrimination that they would face, upon return to Sudan. The judge noted how a number of countries including the UK, Australia and Denmark have gathered information. Given that matters had not

improved in Darfur, such that the Appellant could not return there, the judge observed that,

“I need to assess whether on the grounds of his ethnicity, he would face persecution on relocating to Khartoum. The CPIN states that following an analysis of the UK, Australian and Danish Missions it is evident that there is discrimination of non-Arab Darfuri people but not widespread and systemic targeting of these groups in Khartoum. Those critical of the government or those with a political profile may be monitored and those of a non-Arab Darfuri background may face worse treatment if detained. It is therefore political activity, not their ethnicity, which brings them to the attention of the authorities, with their ethnicity being only one factor which may increase the likelihood of them coming to the attention of the authorities This Appellant does not fall into this category on my findings” (paragraph 29).

6. With this, the judge concluded that, “I find that there is no satisfactory material in the background information provided to show that non-Arab Darfuris will face persecutory treatment” (paragraph 30).
7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge was wrong to have placed controlling weight on the CPIN of August 2017, and to have concluded that the Appellant could safely internally relocate to Khartoum. This is because both the case law that the judge referred to as well as the expert report of Mr Peter Verney, confirmed that ethnic issues in themselves in Sudan, “lead to persecution of non-Arabs”, who would be falsely accused of “political activities”. This was clear from the citation of the extract from Mr Verney’s report, which the judge expressly referred to (at paragraph 19), namely, that “the Home Office has not understood that ethnic identity alone is enough in the eyes of the Sudanese security apparatus to merit an accusation of supporting the ‘rebel’ opposition”.
9. Second, the CPIN relied primarily upon a Joint Danish-UK Fact-Finding Mission of early 2016, but this Danish-UK Report which was so heavily relied upon, was not served upon the Appellant, and it makes references to unnamed/undisclosed “sources”, and it is unclear what the “sources” refer to are in the Joint Mission Report, such that this would reduce the reliability of the Joint Mission Report. In any event, the Danish Immigration Service, an organisation that was brought into severe disrepute for their production of a politicised report in relation to the on ground situation in Eritrea, has already been discredited given the country guidance case of **MST and Others (national service - risk categories) CG**. The judge ought, therefore, not to have placed such controlling weight on this report.
10. Third, in finding that the Appellant was not credible in his account, the judge blurred the distinction between the risk of persecution to him on account of his ethnicity alone, and the credibility account of the Appellant, which the judge referred to. This

was important because the acceptance of the Appellant's non-Arab ethnicity in itself is sufficient to warrant a grant of asylum.

11. Finally, the plain fact remained that the judge did not have any new cogent evidence before her which justified parting from the country guidance case law.
12. In June 2018, permission to appeal was granted by the Upper Tribunal on two grounds. First, that there was an apparent conflict between the CPIN Note of August 2017 and the expert report. Second, that the judge erred in finding that there was sufficient and cogent evidence justifying departure from the country guidance cases.

Submissions

13. At the hearing before me on 2nd November 2018, Ms Patel, appearing on behalf of the Appellant, relied upon the detailed grounds of application. For his part, Mr McVeety, submitted that the question was whether the judge had done enough to show that there was a reasonable basis for her to depart from the country guidance cases. The judge had not only set out the core concerns of Mr Verney, the expert in this case (at paragraph 19), but had then gone on to engage with his report (at paragraph 23) making it clear that, "I have noted the opinion of the country expert on the likelihood of the Appellant facing difficulties from the Sudanese authorities due to his ethnicity ...", before coming to the conclusion that in general a person would not face persecution due to his or her ethnicity alone.
14. In reply, Ms Patel submitted that if one looked at paragraph 26 of the determination, there was a submission there from the Appellant's representative that the judge "considered that **AA** applies and that therefore simply on the ground of his ethnicity the Appellant would be at risk, and that any change in the position by the Home Office on this matter is for migration policy reasons in an effort to attempt to stem the flow of refugees from Sudan" (paragraph 26).

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
16. First, it is clear in the country guidance case law, that regardless of whether an account given by an Appellant is credible or not, the acceptance of the Appellant's non-Arab ethnicity is sufficient to warrant the grant of asylum. The judge cited such case law in the form of **AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056** (at paragraph 24 of the determination); the case of **MM (Darfuris) Sudan CG [2015] UKUT 10** (at paragraph 25 of the determination).
17. Second, there was no new cogent evidence which justified departing from the country guidance case law and this is important given what was said in **SG (Iran) [2012] EWCA Civ 904**.

18. Third, the CPIN of August 2017 itself makes it clear, at paragraph 5.2.5, that “over the past four years the [National Intelligence and Security Service] NISS has used its powers of arrest without charge to arbitrarily detain scores of perceived opponents and other people with real or perceived links to the rebel movements *often targeted because of their ethnic origin*”.
19. Fourth, although the judge refers to the latest country guidance case of **IM and AI (risks – membership of Beja tribe, Beja Congress and JEM) Sudan CG [2016]** which was indeed analysed by the judge (at paragraph 27), what was not addressed by the judge was that the issue of risk to non-Arab Darfuris was affirmed in this latest decision, so that what was decided in **AA** and **MM**.
20. What was said in **IM and AI [2016]** is worth setting out, because it states at paragraph 216, that

“In **HGMO (Relocation to Khartoum)** the Tribunal was concerned in 2006 with non-Arab Darfuris returning to Khartoum but its conclusion on that matter were sharpened up in 2009 in the decision in **AA (Non-Arab Darfurians – relocation)** where the Tribunal found that all non-Arab Darfuris were at risk of persecution in Darfur and could not reasonably be expected to relocate elsewhere in Sudan. This was extended in 2015 in **MM (Darfuris)** where the expression ‘Darfuri’ was to be treated as an ethnic term relating to origins and was not limited to a geographical location.”

21. Indeed, the Tribunal went on to say that,

“There is no legitimate basis upon which we can depart from the Tribunal’s assessment summarised in the preceding paragraph as to the risks faced by Darfuris. Our conclusions, therefore, leave this discreet area of the earlier country guidance intact and our own conclusions speak of more general risks. The only relevance of the specific risks faced by Darfuris is in building up the general picture of the government’s attitude towards those it perceives to be a threat to its stability.”

Remaking the Decision

22. I have remade the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing this appeal for the reasons that I have given above.

Notice of Decision

23. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.
24. An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

25. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

12th November 2018