



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09278/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 16th November 2018**

**Decision & Reasons Promulgated
On 20th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**SAAM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Janjua, Counsel
For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Parkes promulgated following a hearing on 20th October 2017, at Sheldon Court in Birmingham. In the decision, 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 male, a citizen of Sudan, and was born on 8th March 1988. He appealed against the decision of the Respondent dated 7th September

2017, refusing his application for asylum and for 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 non-Arab Darfuri of the Al-Berti tribe, and, although he has no political profile there, he has been arrested twice, when he was held for nearly a month, and has been beaten, and falsely accused of being in the opposition.

The Judge's Findings

4. The judge had before him the country guidance case of **MM (Darfuris) Sudan CG [2015] UKUT 10**, which had also been addressed in the refusal letter (at paragraph 40), and the point made there was that there was no systematic persecution of non-Arab Darfuris. The judge accepted that this was the case, pointing out also that by his own account, the Appellant had not been involved in opposition groups, and so would not attract adverse interest (paragraph 10).

The Grant of Permission

5. Permission to appeal was granted by the Upper Tribunal on 28th February 2018, on the basis that the judge had failed to consider the country guidance case and to apply it in an appropriate manner, deciding to simply adopt the statement in the refusal letter (at paragraph 40 of the RL) that there was no systematic persecution of non-Arab Darfuris outside of Darfur. The country guidance case does not say at any stage that there is no systematic persecution of non-Arab Darfuris outside of Sudan, and it is well-known that the Al-Berti tribe is a non-Arab Darfuri tribe that is at risk of persecution.

Submissions

6. At the hearing before me on 16th November 2018, Miss Aboni, appearing on behalf of the Respondent Secretary of State, stated that she would have to accept that there was an error of law in that the judge, although referring to the country guidance case, had failed to apply it in its spirit.
7. For his part, Mr Janjua stated that the error in this respect was not just at paragraph 10, where the judge expressly refers to there being "no systematic persecution of non-Arab Darfuris outside Darfur", but also at paragraph 20 of the decision, where the judge states that:-

"The fact that non-Arab Darfuris are to be found in the Khartoum area in most walks of life is consistent with the ability of the Appellant's family to live there and the Appellant having lived and worked without any other incidents being reported".

Error of Law

8. I am satisfied that the making of the decision by the judge involved the making of a decision on a point of law such that it amounted to an error of law (see Section 12(1)) of **TCA [2017]**, and accordingly stands to be set aside. The general position is that country guidance cases have to be followed unless sufficient reasons are given to demonstrate why a country guidance case needs to be departed from. In this case, the relevant country guidance case has been misapplied. Given that there is a consensus between both parties appearing before me today that the judge fell into error, this decision must be set aside and remitted back to the First-tier Tribunal to be heard by a Judge other than Judge Parkes.

Notice of Decision

9. The decision of the First-tier Tribunal involved the making of an error on a point 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 remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Parkes pursuant to Practice Statement 7.2(b).
10. 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 his 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 Juss

12th December 2018