Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10579/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th April 2018	**On 17th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

MR M.I.
(ANONYMITY DIRECTION MADE)
Respondent

Representation:
For the Appellant: Miss Ahmad of Counsel
For the Respondent: Miss Kotak of Counsel

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a First-tier Tribunal (Judge Row) allowing the appeal of Mr. M.I. against the Secretary of State's decision to refuse his protection claim.

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2. For the sake of convenience, I shall throughout this decision, refer to the Secretary of State as “the Respondent” and to Mr. M.I. as “the Appellant”; thereby reflecting their respective positions before the First-tier Tribunal.

3. The Appellant is a national of the Sudan (born [ ] 2000). He is just short of 18years of age. He entered the UK on 7th April 2017 having travelled via Italy and France and claimed asylum on the following day.

4. His application for asylum was refused by the Respondent. His claim, in summary, is that he is a member of the Tunjur clan and thus is a non-Arab Darfuri. He claimed that he lived in Khartoum with his maternal aunt and uncle. He said that his older brother was involved in a group opposed to the authorities in the Sudan. As a result of this, his uncle was arrested by the authorities, held for two days and tortured before being released. The Appellant’s aunt arranged for him to go into hiding. On being released, his uncle informed him that the authorities were looking for him and his brother. He should therefore leave the country.

5. Travel was arranged for him. He travelled via Egypt, spent some days in Italy, and then spent approximately eleven months in France. He made no claim to asylum in either Italy or France. He entered the UK concealed in a lorry and claimed asylum on the day after he arrived.

6. The Respondent disbelieved the Appellant’s account of why he had left Khartoum. She did accept however that he is a non-Darfuri member of the Tunjur tribe. The Respondent then considered whether there would be a risk on return to the Sudan on account of his clan membership. This was in view of the CG cases of **AA (Non Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056** and **MM [2015] UKUT 10**. However relying on written evidence that the situation in Sudan had improved, the Respondent came to the view that there would be no real risk to the Appellant on return to Khartoum. She therefore refused his claim.

7. The Appellant’s appeal came before the FtT. In his decision, the judge noted both the Appellant’s core claim and the Respondent’s case. For the purposes of this decision the judge found that the inconsistencies presented in the Appellant’s account, together with his failure to claim asylum in either Italy or France, led him to the conclusion that the Appellant was not telling the truth about his reasons for leaving Sudan. In fact the judge went so far as to make findings that neither the Appellant nor any member of his family had come to the adverse attention of the authorities in Sudan, and that the Appellant is an economic migrant who had come to the United Kingdom not as a refugee but for other reasons [27]. In coming to these conclusions, the judge gave full and proper reasons for his assessment of the evidence and there has been no challenge raised to these findings. Therefore for the purposes of this decision they are to be regarded as final.

8. Having assessed the Appellant's core claim to be not credible, the judge went on as he was obliged to do, to assess the question of risk on return. He said the following at [28]:

> "There still remains the issue of whether the appellant is at risk if he returns to Sudan. It is accepted that he is a non-Arab Darfuri. **MM** and **AA** say that such a person is at risk of persecution and harm if returned to Sudan and is entitled to international protection because of that."

He followed this up at [29] by saying:

> "The country guidance case of **IM and AI (Risks–membership of the Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 00188** does not alter that guidance. Those appeals concern the alleged political activities of two men who were not non-Arab Darfuris."

9. The judge then set out what is the centre piece of the Respondent's challenge. He said at [30]:

> "The respondent argues that there is cogent evidence that the situation in Sudan has changed. The argument is set out in the refusal letter at paragraphs 45-57 and in the **Country Policy and Information Note Sudan: Non-Arab Darfuris August 2017** paragraph 5.2. Paragraph 5.2 cites a range of opinion and views about whether non-Arab Darfuris are at risk of persecution in Khartoum. It refers to, amongst other things, a DFAT Country Report, Sudan and a UK–DIS FFM report. Both these reports record evidence received from various sources, many of which are anonymous."

10. Having set out that paragraph and referred to the documents mentioned, the judge found that he could not place reliance on this evidence to the extent that it displaced the CG cases. Consequently he concluded that the evidence presented by the Respondent was not sufficient to allow him to depart from the CG cases. Thus, he found, the Appellant was at risk on return and despite the lack of credibility of the core claim, his protection claim succeeded.

Onward Appeal

11. The Respondent sought and was granted permission to appeal. The grounds seeking permission argue that the FtTJ failed to engage sufficiently with the evidence presented by the Respondent showing that the CG for Sudan had been overtaken by improved conditions. This resulted in there being inadequate reasons given for rejecting the evidence and thereby allowing the Appellant's appeal.

Error of Law Hearing

12. Before me Miss Ahmad appeared for the Respondent and Miss Kotak for the Appellant. Miss Ahmad sought to rely on the grounds seeking permission which are lengthy but which have been summarised above. In other words there was clear fresh evidence which provided credible information sufficient to allow departure from the CG cases.

13. Miss Kotak made rather more detailed submissions. She emphasised first of all that the main document relied upon by the Respondent was the Respondent's own Country Policy and Information Note dated August 2017. She referred in particular to the section marked at paragraph 5 under the heading "Khartoum". She referred to paragraphs 5.1.3, 5.1.5 and 5.1.7. She highlighted that the grounds seeking permission were not properly reflective of the country information report itself. She drew attention to the last paragraph of the grounds wherein it is reported, "It is finally asserted that the FTTJ has failed to have adequate regard for the information contained within the CPIN. The population of Khartoum is up to 8 million (CPIN 5.1.3); of which up to 2 million are IDPs (5.1.5); of whom perhaps a million are Darfuris (5.1.7)...." Miss Kotak submitted that this statement needed to be contrasted with 5.1.3 of the report itself which said that estimates vary for the size of Khartoum's population from around 5 million to 8 million.

Consideration of Error of Law

14. Having heard submissions from the parties and considered the grounds seeking permission, I am satisfied that the decision of the FtT contains such error, that it requires to be set aside and remade. I now give my reasons for this finding.

15. The task before the FtTJ, once he had found the Appellant's core claim incredible, was to assess whether the Appellant's home area of Khartoum was safe for him, in terms of whether he could return there without facing a real risk of serious harm. In answering that question, the judge was faced with competing information. There were two CG cases and an updated CPIN dated August 2017.

16. The CPIN document was said by the Respondent to provide cogent evidence sufficient to displace the CG cases of **AA** and **MM**.

17. It has long been held that departure from a country guidance case should only be on the basis of fresh credible evidence being presented.

18. I find that the CPIN report of August 2017 must be categorised as cogent evidence, because it draws upon multiple sources including a joint Danish-UK Fact-Finding Mission of 2016, an Australian government report of April 2016 and a Foreign and Commonwealth Office letter of 29th September 2016.

19. I find that the judge has failed to engage sufficiently with this evidence. Instead he appears to have side stepped the issue before him, rejecting the CPIN out of hand by saying at [32] that, "I have had no opportunity to hear oral evidence from these witnesses. I do not know if they can speak first-hand of the situation in Sudan." Those reasons I find are not sufficient to show that the FtTJ has properly considered the authority of the sources that contributed to the report. This is especially in the context of the unchallenged finding made by the judge that the Appellant has lived

in Khartoum for several years and has not come to any harm there. Likewise I find that the judge was wrong to conclude that he should reject the CPIN because he has had no opportunity to hear oral evidence from "these witnesses".

20. This therefore leads me to the conclusion that the FtTJ has not properly assessed the issue before him which was whether the Appellant's home area was safe for him in terms of whether he could return there without facing a real risk of serious harm.

21. I therefore set aside the FtT's decision on the basis that the judge's findings on risk on return cannot stand.

22. I find it is appropriate that this matter be remitted to the First-tier Tribunal for the decision to be remade in that Tribunal. There has been no challenge raised to the judge's findings as set out in paragraph 7 of this decision. I see no reason to interfere with those findings and they are therefore preserved. The rehearing will need to focus on the evidence concerning risk on return to Khartoum for this Appellant.

Notice of Decision

23. The decision of the First-tier Tribunal is set aside for legal error. The matter is remitted to that Tribunal for a rehearing on whether there is a risk on return to the Appellant. The rehearing should be before a judge other than Judge Row.

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 C E Roberts Date 15 April 2018

Deputy Upper Tribunal Judge Roberts