



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11133/2017

**THE IMMIGRATION ACTS**

Heard at Centre City Tower, Birmingham  
On 15<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 13<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

M A S A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Khan (LR)

For the Respondent: Mrs H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Fowell, promulgated on 5<sup>th</sup> December 2017, following a hearing at Birmingham Sheldon Court on 29<sup>th</sup> November 2017. In the determination, the Judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Tribunal and thus the matter comes before me.

## The Appellant

2. The Appellant is a citizen of Sudan. He claims to fear persecution, as a non-Arab Darfuri tribe, namely the Berti, and also because of his political activities. The Respondent Secretary of State accepted the Appellant's claim that he was a Berti, but rejected the contention that he was politically involved.
3. Judge Fowell rejected the Appellant's claim that he had undertaken political activities. In fact, the Appellant "denied having any particular political views" (paragraph 13). Judge Fowell did, however, find that the Appellant was at risk of persecution as a member of a non-Arab Darfuri tribe. In so concluding, the judge had regard to the following pieces of evidence.
4. First, there was the country guidance case itself of **AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056**, where the Tribunal had held that all non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to be relocated elsewhere in Sudan. Furthermore, there was the more recent decision of **MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC)**, where it was held that "Darfuri" is an ethnic term relating to origins, not as a geographical term. So it covers even Darfuris who were not born in Darfur. Third, there was evidence that cast some doubt on this basic proposition. There was the Home Office Country Policy and Information Note for Sudan, dated August 2017, "*Sudan: Opposition to the Government, including sur place activity*". This had made it clear that although most human rights organisations report that non-Darfuris suffer discrimination, they "do not indicate that there is widespread, systematic targeting of these groups in Khartoum on grounds of ethnicity alone" (see paragraph 63 of this report). Fourth, Judge Fowell noted how the CPIN was revised following the recent country guidance given in **IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 00188**, in which the Upper Tribunal set out comprehensive guidance on the risk on return to Sudan, although the main risk that the Tribunal was concerned with was on political grounds (see paragraph 4 of the determination).
5. The judge, in fact, set out relevant parts of the decision in **IM and AM** (see paragraph 28), observing that this was a case where the Appellant did not claim to be a Darfuri, but claimed to be member of the Berti tribe from the Darfur region of Sudan, but this claim was then decisively rejected. What the Tribunal made explicitly clear in **IM and AM** was that,
 

"in these circumstances, 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." (Paragraph 28).
6. What Judge Fowell drew from this was that "this earlier country guidance therefore remains applicable unless displaced by cogent evidence to the contrary" (paragraph 29). For good measure, however, Judge Fowell also went on to consider Section 5.2 on

treatment of non-Arab Darfuris, in the two internal hyperlinks, and proceeded to set this out extensively over some four pages (see pages 9 – 12 of the determination).

7. On this basis, Judge Fowell concluded that what this showed was “my no means an overwhelming endorsement of the Respondent’s case” because the position as described was such that

“many groups from outside the capital have managed to settle there in relative safety without any particular animosity between the population groups; the risks of ill-treatment in each case comes from the government authorities; the NISS does resort to arbitrary arrests and detention in its efforts to stamp out the rebel movements”

and then proceeding to point out that “Darfuris are particularly vulnerable; according to the DFAT report (at 5.2.9),” in that “there is a moderate risk of discrimination and violence on this basis however some groups (not Berti/Tunjour) could safely relocate there”. It is significant that the “Berti” tribe is singled out as one that is not able to safely relocate there.

8. On this basis, the appeal is allowed.

### **Grounds of Application**

9. The grounds of application state that the judge failed to take into account the joint Danish/British FFM to Sudan, and new OGN of August 2017, preferring instead to follow the existing country guidance, having identified that it was common ground that the Appellant was a non-Arab Darfuri Sudanese.
10. On 28<sup>th</sup> December 2017 permission to appeal was granted on the basis that the Judge arguably failed to analyse the relevance of that country guidance in the light of the more recent evidence (and particularly the FFM report) adequately.

### **Submissions**

11. At the hearing before me on 15<sup>th</sup> August 2018, Mrs Aboni relied upon the grounds of application. She submitted that the position of the Secretary of State in regards to general risk which is based purely on ethnicity has been reviewed in the light of the country policy and information note (CPIN), published in August 2017. The Secretary of State now asserts that given cogent new evidence demonstrating that the situation for non-Arab Darfuris has improved, there was no longer a risk of anything more than societal discrimination on the basis of non-Arab Darfuri ethnicity alone, unless it could also additionally be shown that the person in question had a political profile. Second, in this case, the judge wrongly did not accept that the evidence relied upon by the Secretary of State was sufficient for him to depart from the country guidance cases.
12. For his part, Mr Khan submitted that any departure from a country guidance case must be supported by cogent grounds and for very strong reasons. This was well-established. The evidence that the Secretary of State submitted was not as such.

13. Second, and in any event, the judge had entered into a qualitative assessment of the Appellant's situation, applying the relevant case law, and then coming to the conclusion that, on the basis of the background evidence laid up at paragraphs 30 to 32, the Appellant was entitled to asylum on the basis of being a member of the Berti tribe (which the Secretary of State does not dispute).
14. Finally, even though the Appellant lacked credibility on his contention that he was politically active, he was entitled to a finding by the judge that he was at risk on the basis of ethnicity alone, because the judge was able to justify this by reference to the country guidance given. The judge was entitled to come down on one side of the argument. There can be no error of law in this.
15. All this was, was a disagreement with the decision of the judge. In fact, the judge sets out in very great detail (at paragraph 30) the evidence that the Respondent seeks to rely upon, under the heading "Treatment of Non-Arab Darfuris". He concludes (at paragraph 31) by stating that this was "by no means an overwhelming endorsement of the Respondent's case". There was no error of law.

### **No Error of Law**

16. I am satisfied that the making of the decision by the judge did not involve 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. Whereas there is an established rule of law that a country guidance case must be followed unless there is cogent evidence before a Tribunal suggesting that it should not, it is the abnormal proposition to reverse the argument and to submit that a decision maker has to provide clear reasons for not following a country guidance case, where ordinarily he or she is expected to do precisely that.
17. Second, this is not a case where the judge simply chose to follow the country guidance case. He sets out at the outset (at paragraph 4) the relevant legal materials that he must have regard to, one of which is certainly the August 2017 note which the Respondent relies upon. However, it is important to remember that this is simply one item of evidence as against several others which the judge also has regard to.
18. The judge looks at all of the evidence before him. Importantly, in relation to that which the Respondent relies upon, the judge gives this even more detailed consideration over several pages (at paragraph 30) before coming to the conclusion that this was not a "overwhelming endorsement of the Respondent's case".
19. Finally, and in any event, even in relation to that material, there is a clear exception pointed out in relation to the Berti people, who it is said cannot safely relocate (at paragraph 31). The judge is clear that there remains a significant risk (expressed as moderate) on the basis of ethnicity, and this is plainly apparent from the latest country guidance in **IM and AM** (see paragraph 32).
20. The judge's conclusion that "Mr Ali is entitled to asylum on the basis of his ethnicity alone" (paragraph 32) was accordingly, one that he was entitled to come to.

**Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

An anonymity order is made.

The appeal of the Secretary of State is dismissed.

**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.

Signed

Date

Deputy Upper Tribunal Judge Juss

10<sup>th</sup> September 2018