



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11348/2017

**THE IMMIGRATION ACTS**

Heard at Newport  
On 17<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 06<sup>th</sup> September 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

[A N]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Edwards, solicitor of Albany Solicitors (Cardiff)

For the Respondent: Ms H Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sudan born on 7<sup>th</sup> July 1999.
2. He claimed asylum on 10<sup>th</sup> June 2017 on the basis that he feared mistreatment from the Sudanese government on account of his race and political opinion. That application was refused on 20<sup>th</sup> October 2017. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge O'Brien for hearing on 5<sup>th</sup> December 2017. In a determination promulgated on 9<sup>th</sup> January 2018 the appeal was dismissed.

3. Leave to appeal to the Upper Tribunal was granted on the basis that the Judge failed to consider adequately the question of internal relocation and failed to apply the correct standard of proof to the issue whether the appellant would be able to reunite with his family. Thus, the matter comes before me to determine those discrete issues.
4. The appellant's family home was in South Kordofan but it was his case that he was a member of the Hawazma tribe. It was argued on behalf of the appellant that for reason of that tribal membership he would be at risk of persecution of government forces either at home or in Khartoum because the Hawazma tribe had changed political allegiance and would be considered as a rebel tribe by the government. The Judge considered the evidence that was presented, in particular that of Dr Fluehr-Lobban, and concluded that there was no direct evidence of persecution or mistreatment of the Hawazma in Khartoum. The Judge would have expected some evidence that that was so, particularly when that tribe had changed allegiances around six years ago.
5. Although the Judge concluded that the appellant would be at risk in his home area, the Judge did not find that there would be a risk of ill-treatment or persecution arising in Khartoum. Significantly, that is not a finding that is the subject of challenge.
6. In terms of tribal connection, it was the finding that the particular tribe was part of the Arab Baggara tribe and therefore that the appellant was of Arab rather than African descent. It was the finding of the Judge that the appellant was not a Darfuri nor was he from a non-Arab tribe. Thus the evidence that was relied upon as to risk to non-Arab Darfuris on return to Sudan was not entirely relevant to the issue of risk although it is clear from the determination that regard was had to certain reports, particularly as to the living conditions that existed in Khartoum.
7. Reference is made to the report by Eric Reeves of 22<sup>nd</sup> September 2017 as to risk to non-Arab Darfuris on return to Sudan, which report touches upon conditions in Darfur generally. Reference is made to the overcrowded IDP camps in the Khartoum area and nearby. Reference is made to the report that Khartoum has repeatedly and vigorously announced plans to dismantle IDP camps in Darfur but it is said that the dismantling of such camps would be a disaster for Darfuris who have depended upon them for tenuous security and as a means for organising distribution of humanitarian assistance and without such camps residents will face an extremely insecure environment without the possibility of organised relief assistance.
8. It is to be noted that this is a report focused upon non-Arab Darfuris, which is not precisely the situation of the appellant in this case.
9. Much of the report of Eric Reeves revolves around the risk of persecution or being targeted as a Darfuri non-Arab. Such does not apply in such stark terms to the appellant and, as I have indicated, no challenge as to the issue of risk upon return has been mounted in the grounds of appeal.

10. What is said is that the Judge has erred in the finding made at paragraph 37 of the determination that:

“The mere risk of returning to live in an IDP camp is insufficient to engage Article 3 ECHR (as found in **HGMO**). However, the appellant has been in contact with his family since leaving Sudan and there is at least the prospect that he would be able to reunite with them, either where they are now residing or in Khartoum.”

11. It is contended that the correct test for internal relocation is whether or not such relocation is “unduly harsh”. Absence of persecution and/or conditions amounting to a violation of Article 3 will not suffice.
12. It seems to me that such a challenge misunderstands the nature of the considerations applied in **HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 0062**. Consideration was given by the Upper Tribunal to the issue of relocation to Khartoum. It has to be borne in mind that that was a decision looking at a returnee who was of Darfuri origin or non-Arab Darfuri origin.
13. There was a finding in that decision that a person of Darfuri origin or non-Arab Darfuri origin can in general be expected to relocate to Khartoum. If that person were in practice compelled to live in an IDP camp or a squatter area in Khartoum, this would not expose the person concerned to a real risk of serious harm or ill-treatment contrary to Article 3 or conditions which would be unduly harsh, according to the legal tests in **Januzi [2006] UKHL 5**. Even so, it cannot automatically be assumed that a returnee who is of Darfuri origin or non-Arab Darfuri origin will be reasonably likely to have to live in such a camp or area – it will be for an appellant to prove this in his or her case.
14. The Tribunal paid careful regard to the conditions for IDPs in Khartoum state as from paragraph 229 onwards, having considered the expert reports and the living conditions in an IDP camp. Foremost in the consideration of the Tribunal were the principles in **Januzi** to the extent to which conditions were unduly harsh or unreasonable.
15. A summary of conclusions is set out in paragraph 309 of **HGMO**. In particular, paragraph 309(5) provides:
- “(5) The evidence does not show that any returnee of either of the origins described in subparagraph (4) will, regardless of their personal circumstances, have no option but to live in an IDP camp or a squatter area, if returned from the United Kingdom to Khartoum. It has not been suggested that the Sudanese authorities have a policy of requiring a returnee of either of the origins described in subparagraph (4) to go and live in IDP camps or squatter areas. The burden of proof is on the appellant to show a reasonable likelihood of having to live in such a place. This will involve showing that it is not reasonably likely that the returnee will have any money, or access to money, or access to friends or relatives who may be able to assist in helping the returnee to establish him or herself.

- (6) But even if a such a person shows that it is reasonably likely he or she will end up in such a camp or area, conditions there, though poor, are not significantly worse than the subsistence level existence in which people in Sudan generally live. Applying the principle set out in Januzi, the conditions in such camps or areas are not generally such as to amount to unduly harsh conditions.”
16. Although the Judge may have fallen into error in making reference to Article 3 of the ECHR rather than the issue of unduly harsh it is abundantly clear from the passages in HGMO that it was not unduly harsh for somebody to live in an IDP camp. It is said that the Judge was involved in undue speculation concerning the contact with family. It seems to me that the approach taken in paragraph 37 was entirely consistent with the approach as set out in paragraph 309. It was common ground that the appellant’s family continued to live in his home area. Thus, it was not unreasonable to conclude that there was at least a prospect that the appellant may unite with them or make contact with them. However, even if he did not do so the prospect of an IDP camp without more was not such as to engage the principles in Januzi.
17. Consideration of return was made in MM (Darfuris) Sudan CG [2015] UKUT 0010 (IAC). The findings in HGMO were preserved insofar that it was found that neither involuntary returnees nor failed asylum seekers nor persons of military age were at real risk on return to Khartoum. There was little in that decision to displace the conclusions as to the IDP camps. Albeit of some antiquity, it would seem that the conclusions of the Tribunal in HGMO as to whether or not it was unduly harsh for someone to live in an IDP camp have not been significantly overturned and therefore that the Judge was entitled to rely upon the comments in HGMO as to the issue of internal relocation.
18. It is contended, however, that the decision of AH (Sudan) [2007] UKHL 49 required the decision maker to take account of all relevant circumstances pertaining to the appellant and decide whether it was reasonable to expect the appellant to relocate or whether it was unduly harsh to expect him to do so. It is said that in this case that the Judge failed to consider the situation of the particular appellant.
19. Given such a proposition, I invited Mr Edwards to indicate what were the particular personal features of the appellant such that would make his residence in an IDP camp unduly harsh. He indicated that it was his youth and his lack of experience in growing up in Sudan and his lack of family support in Sudan.
20. It does not seem to me, however, that such features make a real distinction in the case of the appellant from those who would otherwise be returned as failed asylum seekers to Khartoum. It may be argued that as he is not in fact a Darfuri and not a non-Arab his situation may be better in terms of access of support than those who are. It is clear from the nature of the claim as presented that the appellant has managed to cope well in difficult circumstances. According to his account, he was separated from his family in 2013 and managed to live in another area for five to six months and then arranged to travel to Libya, finding work in Libya at a local garage until the end of 2015 when

he made the decision to leave Libya and come to the United Kingdom. Thus, he has had considerable experience of standing on his own feet, albeit at a young age. He has coped with difficult circumstances and it is difficult to argue without more that he would not be able to cope with life in an IDP camp, if indeed, he was unfortunate enough to find himself in that position. He clearly has been able to find work and to fend for himself and there was little reason to believe that he could not do so.

21. In the circumstances therefore, I find that the Judge applied the proper considerations to relocation to Khartoum and that the decision as promulgated properly reflects the country guidance on that issue and contains no significant or material error of approach or conclusion.

### **Decision**

The appeal of the appellant to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand, namely, that the appellant's appeal in respect of asylum, humanitarian protection and/or human rights stands 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 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 3 September 2018



Upper Tribunal Judge King TD