



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: PA/13510/2017

THE IMMIGRATION ACTS

Heard at: Field House

On: 21 August 2018

Decision and Reasons Promulgated

On 24 September 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MR M A M A

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms P Glass, counsel, instructed by Albany Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.
2. The appellant is a national of Sudan, born on 1 February 1994. He appeals with permission against the decision of First-tier Tribunal Judge Devittie, promulgated on 22 February 2018, dismissing his appeal against the respondent's decision to refuse his application for asylum and humanitarian protection.

3. The Judge considered his claim of assisting armed fighters resulting in his being at risk of persecution. He found that features of the appellant's evidence were unsatisfactory and significantly undermined his credibility. He set these out at paragraph [19(1-4)].
4. The appellant was unable to provide a coherent statement relating to his interrogation over a seven day period. This undermined the core of his evidence. His evidence as to whether he had an uncle in Khartoum betrayed a deliberate design to make the facts of his claim suit his asylum claim with little regard to the truth. His evidence on basic details relating to his release was wholly unsatisfactory. His first response was that he did not know the amount that was paid for his release and later stated that he did not know if any sum had been paid at all.
5. Finally, he was at first clear that he did not know what document he had signed and whether it attached conditions to his release. In later responses he stated that he did not know what he had been required to sign and that he became aware of this when he was told that he should inform the authorities immediately on learning of the whereabouts of the armed members. The clear impression he gave regarding events that are central to his claim, is that he was making up his evidence as he went along.
6. In the light of these unsatisfactory features in his evidence, he found at [20] that he had failed to establish even on the lower standard that he was the subject of adverse interest by the authorities. He accordingly did not accept his evidence that he assisted members of the armed movement with food and that as a consequence he was arrested.
7. He concluded that the appellant is not wanted by the authorities in his home area and that it is safe for him to return there. To the extent that he would be at risk in his home area solely on account of his ethnicity he found that it would be reasonable and safe for him to relocate to Khartoum [21].
8. On 20 June 2018, First-tier Tribunal Judge Chapman granted the appellant permission to appeal. In the light of the fact that the respondent accepted that the appellant is a member of a non-Arab Darfuri tribe, it was arguable that the Judge erred in finding at [17-18], based on the respondent's submissions and the August 2017 CPIN, that he could depart from the established country guidance - AA (Non Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and IM & AI [2016] UKUT 00199 - and find that it would not be unduly harsh, unsafe or unreasonable to expect the appellant to relocate to Khartoum.
9. At the commencement of the hearing, Ms Glass, who represented the appellant at the hearing, informed the Tribunal that she was not asserting that the decision of the Judge was either perverse or irrational.
10. She submitted that the Judge had not followed a binding decision of a higher court. She referred to the country guidance case of MM (Darfuris) Sudan CG [2015] which affirmed the conclusion in AA, supra. The more recent decision in IM & AI, supra and JEM (Sudan) CG [2016] UKUT 00188, again affirmed the above cases.

11. Departure from a binding decision must be based on strong grounds. She noted that the Judge considered a report by a joint Danish–UK fact finding mission in 2016, and an Australian government report of April 2016 and the Foreign and Commonwealth Office.
12. She submitted that the Judge failed to consider adequately a material fact in the appellant’s case, namely the previous history of arrest and previous interest by the authorities. The Judge did not provide detailed grounds for preference of the new reports and failed to note that the DIS report is concerned with perceived political histories. There are limitations in the Danish report. It is not a reliable document in all respects.
13. In the circumstances the Judge should not have departed from the binding decisions, notably in AA (2009). She submitted that the threshold for departing from a country guidance case is high.
14. She referred at paragraph 5 of the grounds to his findings regarding the appellant’s credibility set out at [19]. In particular, the appellant always maintained that he was the victim of impugned membership. Further, the distinction in relation to his ‘uncle/honorary uncle’ was immaterial. The person was of the same ethnicity and acted as a protector. There was no manipulation involved. He gave disproportionate weight to a distinction of little significance.
15. Nor was the appellant, through his uncle, privy to information relating to ‘release money and Signing document’ – paragraph 5(c) of the grounds. Moreover, the conclusion that the appellant was making up his evidence as he went along is unfair. The appellant has not been party to any negotiations and was thus unable to explain the points raised. He was innocent of all political activism.
16. On behalf of the respondent, Mr Tarlow submitted that the challenge amounts to a disagreement with the established findings by the First–tier Judge. He concluded that the appellant’s evidence had not been credible in the circumstances. He had proper regard to the conclusions reached in the Danish report which he set out in detail.
17. Mr Tarlow referred to the reasons for refusal. The respondent considered the guidance in the Landinfo report dated 11 November 2013. At page 15, it was noted that the CPIN, August 2017, confirms that most sources commenting on the human rights situation of non–Arab Darfuris of 2016 and 2017, report that there is discrimination of such persons but did not indicate that there is widespread, systematic targeting of these groups in Khartoum on the grounds of ethnicity alone – para 2.3.9.
18. That laid the basis for the secretary of state’s position that there was cogent evidence which has become available since the promulgation of AA and MM, establishing that in general, non–Arab Darfuris are not at risk of persecution solely on grounds of ethnicity in Khartoum.
19. He submitted that these constituted the reasons why the First–tier Judge was able to depart from existing country guidance. The report was made two years after the decision in MM which was promulgated in 2015.

20. He submitted that the Judge has undertaken a thorough determination.

Assessment

21. The issue in this appeal is whether the Judge was entitled to conclude, as he did, that it had been shown that there was a material change in the country conditions affecting non-Arab Darfuris in Khartoum.
22. He noted that most sources commenting on the human rights situation of non-Arab Darfuris in 2016 and 2017 report that there is discrimination of such persons but do not indicate that there is widespread, systematic targeting of those groups in Khartoum on the grounds of ethnicity alone.
23. Accordingly, the respondent's contention was that in general, non-Arab Darfuris would not be at risk of persecution solely on the grounds of ethnicity in Khartoum. The Judge set out the primary source of information in this regard at [5]. This was obtained by a joint Danish-UK fact finding mission in early 2016, an Australian government report of April 2016 and a Foreign & Commonwealth Office report, indicating that there is a significant and established population of non-Arab Darfuris living in Khartoum and the surrounding areas.
24. The Judge also referred to a letter from the British Ambassador in Khartoum dated 29 September 2016, in which it was noted that although they have also received reports of harassment of individuals and groups perceived to have an anti-government political stance, such as the Darfuri student associations, these issues are not overriding for non-Arab Darfuris as opposed to other ethnicities. Many Darfuris, including non-Arabs, are represented at senior levels in government, academia, the security forces, the media and other institutions.
25. The Judge also had regard to the appellant's reliance on an expert report, the main contentions of which were fully set out at paragraph [15]. He noted the conclusion of the expert, a senior fellow at Harvard University, which he set out at paragraph 15(7).
26. He stated that he had closely read the Danish-UK fact finding report, which he found to be a comprehensive document supported by the letter from the UK embassy in Khartoum. It clearly outlined its network of sources of information on the grounds relating to non-Arab Darfuris including the risks they may face on return as failed asylum seekers. He concluded at [16] that there was nothing in the report to suggest any evidence of partiality.
27. He did not agree with the 'criticism' of the expert that the report is not evidence-based as he claims they did not interview any refugees. The Judge stated that this was an 'on the ground visit' by a team of independent persons from several countries and he was satisfied that to the extent that the findings of the Danish report are in conflict with those of the expert, he preferred the former - [16].
28. He noted that previous country guidance cases which held that non-Arabs were at risk in Khartoum were largely informed by the stand taken by the respondent in guidance to case workers. The change of stance by the respondent has been made after a thorough and comprehensive review of prevailing country conditions.

29. It was on that basis that he found that the appellant would not be at risk on his return via Khartoum airport solely on account of his being a non-Arab Darfuri who had sought asylum in the UK.
30. I find that the Judge properly directed himself regarding the departure by a Tribunal from the country guidance. He noted that there must be strong grounds supported by cogent evidence justifying such a departure [14]. The onus lies on the respondent. He noted that the Tribunal in AA reached its findings having considered the Home Office operational guidance note of November 2009.
31. He has given proper reasons for finding that there has been a material change in the country conditions affecting non-Arab Darfuris in Khartoum at [18]. He has given sustainable reasons for concluding on the basis of the comprehensive report of the Danish-UK fact finding report, that the appellant would not in the circumstances prevailing currently be at risk on return.
32. He did not accept that the appellant had assisted members of the armed movement with food and that as a consequence he had been arrested. He is not wanted by the authorities in his home area and it would be safe to return him there [20-21]. He has given sustainable reasons for concluding that the appellant's evidence is unsatisfactory and how that undermined his credibility.

### Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction made continued.

Signed

Deputy Upper Tribunal Judge Mailer

18 September 2018