



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03906/2019

THE IMMIGRATION ACTS

**Heard at: Field House
On: 10 December 2019**

**Decision & Reasons Promulgated
On: 18 December 2019**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MHADI [A]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan, instructed by Tann Law Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sudan born on 15 May 1994. He has been given permission to appeal against the decision of First-tier Tribunal Judge NMK Lawrence dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant arrived in the United Kingdom on 24 September 2015, having left Sudan in June or August 2015 and travelled through Libya, Italy and France. He claimed asylum on 24 September 2015 and his claim was refused on 9 April 2019.

3. The appellant's asylum claim was made on the basis that he feared the Janjaweed and the Sudanese government as he was from a non-Arab Darfuri tribe, the Tama tribe. He claimed that he was from Naroma in Darfur. In September 2014 he was detained by the Janjaweed on suspicion of being involved with the rebels and was kept in the forest for three months until he managed to untie himself and escape. He fled to Khartoum and worked there for market stall owners and then left after six months.

4. In the decision refusing the appellant's claim, the respondent accepted the appellant's nationality and ethnicity but did not accept his account of his detention by the Janjaweed. The respondent did not accept that the appellant was at risk in Khartoum and considered that his removal would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard on 27 June 2019 before First-tier Tribunal Judge NMK Lawrence. The appellant's representative raised issues about interpretation, both at the interview and at the hearing, submitting that the appellant had not been provided with a Tama interpreter as requested and had struggled with the Arabic interpreter provided. The judge noted discrepancies in the appellant's evidence and did not accept that they were due to interpreter problems at the interview, nor that there were any such problems at the hearing before him. He did not find the appellant's account to be credible and did not accept his claim to have been detained by the Janjaweed. The judge considered that the appellant was not at risk in Khartoum on the basis of being non-Darfuri and did not consider that the situation in Sudan engaged Article 15(c) of the Directive. He accordingly dismissed the appeal on all grounds.

6. The appellant sought permission to appeal on the grounds that there had been procedural unfairness in the judge failing to adjourn the proceedings when he became aware that the interpreter was not a Tama interpreter and when the appellant made it clear that his Arabic was poor; that the judge had failed to consider the appellant's representations about problems with the interpreter at the interview; that the judge had failed appropriately to consider the country expert report; and that the judge had failed to give adequate reasons for departing from the country guidance in AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan (CG) [2015] UKUT 10.

7. Permission to appeal to the Upper Tribunal was granted on all grounds and, in response, the respondent filed a Rule 24 opposing the appeal.

8. At the hearing, Mr Whitwell clarified that the Rule 24 only addressed the first ground since the full grounds were not available to the respondent at the time. He maintained the challenge to all the grounds with the exception of the last ground which he did not oppose.

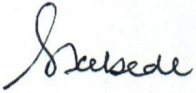
9. As Mr Whitwell quite properly observed, the judge's comment at the end of page 5 of his decision, that "*the appellant does not claim being a non-Arab African is sufficient to engage protection issues*" was not consistent with the

appellant's skeleton argument at [17] and [50] where such a claim was clearly made. In light of such a claim, the judge failed to provide any detailed reasons for departing from the country guidance in AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 10, in which it was held that "*All non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan.*" Mr Whitwell referred to the recent guidance in AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 282 where it was found that "*there is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC) requires revision. Those cases should still be followed.*" He also observed that the latest Home Office CPIN of November 2019 instructed decision-makers to follow that guidance.

10. In the circumstances Mr Whitwell accepted that the judge's decision had to be set aside and re-made by allowing the appeal in light of the concession, in the respondent's reasons for refusal letter of 9 April 2019, that the appellant was a non-Arab Darfuri. Mr Whitwell's concession was entirely appropriate in the circumstances.

DECISION

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside and is re-made by allowing the appellant's appeal on asylum and Article 3 human rights grounds, on the basis that he is at risk on return to Sudan as a non-Arab Darfuri.

Signed 
Upper Tribunal Judge Kebede
2019

Dated: 10 December