



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

Appeal Number: PA/06866/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 21st October 2019**

**Decision & Reasons Promulgated
On 24th October 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**MAMA
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Ms Faryl, Lei Dat and Baig Solicitors

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sudan born in 1973. He appeals with permission the decision of the First-tier Tribunal (Judge Herwald) to dismiss his protection appeal.
2. For the purpose of this appeal the material finding of fact made by the First-tier Tribunal is that the Appellant is a non-Arab Darfuri.
3. Having made that finding the First-tier Tribunal directed itself to the country guidance in AA (non-Arab Darfuris - Relocation) Sudan CG

[2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC), to the effect that all non-Arab Darfuris would face persecution in Sudan on the basis of their ethnicity alone. Applying that country guidance to the accepted facts about the Appellant's ethnicity, the Appellant would win his appeal.

4. The Tribunal was not however satisfied that the country guidance continues to apply. It noted the Respondent's submission that the situation in Sudan has improved for non-Arab Darfuris and found the Respondent's Country Policy and Information Note ('the CPIN') to constitute cogent evidence justifying departure from the guidance in AA and MM. It was driven to the conclusion that "things are very different for Darfuris now, particularly in Khartoum". On that basis the appeal was dismissed.
5. I am satisfied that in so doing the First-tier Tribunal erred. Whilst Mr Tan did submit that Judge Herwald had been entitled to reach the decision that he did on the basis of the evidence before him, this is something of a moot submission given that the Respondent now accepts that the information in the CPIN is *not* capable of displacing the extant country guidance, which should continue to be applied: AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 00282 (IAC).
6. I should also note that the Respondent had submitted, by way of 'Rule 24 response' dated the 2nd October 2018 that any error in approach to the country guidance notwithstanding, that guidance did not assist this Appellant, who has not lived in Darfur since he was five, having latterly lived in Khartoum. Before me Mr Tan accepted that in fact this personal history had no bearing on the outcome of the appeal since the Tribunal has made it clear that it is an individual's ethnicity, as opposed to place of residence, which counts in this context: MM (Darfuris) Sudan CG [2015] UKUT 00010.
7. I therefore set the decision of the First-tier Tribunal aside and substitute it by a decision allowing the appeal.

Anonymity

8. The Appellant is a refugee. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

"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 to, amongst others, both the Appellant and the

Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

9. The determination of the First-tier Tribunal contains material error of law and it is set aside.
10. The decision in the appeal is remade as follows:
“the appeal is allowed on protection grounds”.
11. There is an order for anonymity.

Upper Tribunal Judge Bruce
21st October 2019