



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

Appeal Number: PA/08921/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford  
on 14<sup>th</sup> August 2019**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> August 2019**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**EM  
(anonymity direction made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms C Dunne OICS Level 3 representative from the IAS.  
For the Respondent: Mr A McVeety Senior Home Office Presenting Officer.

**DECISION AND REASONS**

- 1.** The Upper Tribunal found the First-Tier Tribunal had erred in law in a decision promulgated on 10 June 2019 which set aside the earlier decision and gave directions for the future management of this appeal.
- 2.** Re-listing was delayed pending the hearing of a forthcoming country guidance case relating to Sudan and listed for a Case Management Review Hearing today at which it was anticipated the new country guidance decision would have been available. It is now known, however,

that the cases originally designated as country guidance cases have been reclassified in light of the Secretary of State's position which accepted that for non-Arab Darfuri the country situation in Sudan is so uncertain that there is insufficient information to amend the existing Sudan CG cases of *AA (non-Arab relocation) Sudan CG [2009] UKAIT 00056* and *MM (Darfuri) Sudan CG [2015] UKUT 00010*. The respondent agreed that the cases initially listed for country guidance would be determined on the basis of the existing country guidance cases as a result of which the Upper Tribunal no longer designated the two appeals as country guidance cases.

## **Background**

3. The appellant is a citizen of Sudan. The judge who found an error of law, Upper Tribunal Judge Plimmer, noted at [4 and 5] the following:
  4. The appellant made fresh claim submissions, which focused upon the fact that his brother ('B') was granted refugee status, for reasons relating to his membership of the Berti tribe, together with DNA evidence that they are brothers with the same parents.
  5. In a decision dated 25 August 2017, the respondent refused the appellant's fresh claim for asylum (albeit recognising that the fresh submissions should be treated as a fresh claim). The respondent noted at [18] of his decision letter that B was "*granted asylum on 1 September 2014 due to it being accepted that he was a member of the Berti tribe*" and accepted at [23] the DNA evidence establishing that the appellant and B are siblings, sharing the same biological parents. The respondent however concluded that this was insufficient to accept the appellant's claimed nationality or tribe, given the nature and extent of the credibility concerns regarding the appellant's account."
4. At [18] Upper Tribunal Judge Plimmer notes:
  18. Both representatives agreed that if the appellant's nationality and tribe are accepted, he is entitled to refugee status ..."
5. Before the Upper Tribunal Mr McVeety conceded that the Secretary of State had accepted that the appellant B was entitled to a grant of refugee status as a result of his ethnicity as a member of the Berti tribe and relevant country guidance case law. Mr McVeety accepted that the appellant is the biological brother of B as a result of their shared parentage, supported by the DNA results. Mr McVeety accepted having reviewed all the available evidence and applying the lower standard applicable to a protection appeal of this nature that the appellant had established that he is a member of the Berti tribe as had been accepted with his brother.

6. I find in light of the above and the respondent's concession before Judge Plimmer that as the appellant's nationality and tribal ethnic identity are accepted the appellant is entitled to be recognised as a refugee in light of the current country guidance cases. I substitute a decision allowing the appeal on this basis.

## **Decision**

7. **I remake the decision as follows. This appeal is allowed.**

Anonymity.

8. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Upper Tribunal Judge Hanson

Dated the 14<sup>th</sup> August 2019