



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/11233/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**At Field House, on the papers  
5 December 2019**

**Decision & Reasons  
Promulgated  
On 9 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**AA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**ANONYMITY DIRECTION**

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. Liberty to apply.

**DECISION AND REASONS**

1. It is not in dispute that the appellant is a national of Sudan and a member of the Berti tribe (and therefore a "Non-Arab Dafuri"). He appealed to the F-tT against a decision of the SSHD of 25 October 2017 refusing his protection and human rights claims.

2. The First-tier Tribunal dismissed the appellant's appeal, but permission to appeal against such decision was subsequently granted.
3. By way of an e-mail to the Upper Tribunal on 28 November 2019, Mr A. McVeety, acting on behalf of the SSHD, invited the Upper Tribunal to allow the appellant's appeal given the undisputed findings of fact and the terms of the recent Upper Tribunal decision in AAR & AA (Non-Arab Dafuris - return) Sudan [2019] UKUT 282 (IAC). I treat this as an invitation for the Upper Tribunal to set aside the decision of the First-tier Tribunal on the basis that it was wrong to distinguish the Country Guidance decision of MM [2015] UKUT 00010 and then, upon re-making the decision on appeal for itself, to allow the appellant's appeal for the reasons identified in AAR.
4. I conclude, for the reasons set out in the preceding paragraph, that the decision of the First-tier Tribunal is vitiated by legal error and I set it aside. Upon remaking, I conclude that the appellant's appeal should be allowed on the basis that his removal to Sudan would lead to a breach of the Refugee Convention.

### **Decision**

For the reasons given above,

- (I) The decision of the First-tier Tribunal is set aside;
- (II) The appellant's appeal is allowed on the basis that his removal would breach the United Kingdom's obligations under the Refugee Convention.

Signed: Upper Tribunal Judge O'Connor



Date: 5 December 2019