Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/14328/2018**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 6 December 2019	**On 9 January 2020**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

A
(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Howard (Solicitor)
For the Respondent: Mr D Mills (Senior Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 18 March 2019 (the date of its written reasons) following a hearing of 4 March 2019. The tribunal's decision was to dismiss the claimant's appeal against the Secretary of State's decision of 18 December 2018 refusing to grant him international protection.

2. By way of very brief background, the claimant is a Sudanese national who was born on 2 January 1989. It was accepted that he is of Maselit ethnicity. It was also accepted that, given his

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ethnicity, he would be at risk of persecution or serious harm if he was required to return to his original home area in Darfur. But the Secretary of State had disbelieved other aspects of his claim and had concluded that he would be able to safely return to Sudan and relocate to Khartoum.

3. The tribunal agreed with the Secretary of State that, notwithstanding previous country guidance decisions of the Upper Tribunal and its predecessor which had suggested to the contrary, the claimant would be able to safely relocate to Khartoum. The relevant country guidance decisions which the claimant had relied upon for the proposition that he could not safely relocate are *AA (Non-Arab Darfuris, relocation) Sudan* CG [2009] UKAIT 56 and *MM (Darfuris) Sudan* CG [2015] UKUT 10 (IAC). The tribunal, in its written reasons, said that it was "permissible to depart from country guidance if there is evidence that justifies such a course of action". As to the existence of what it found to be sufficient evidence, it referred to what it simply described as "the CPIN", which is a document which was said to evidence discrimination directed towards Darfuris in Khartoum but which would fall short of persecution. In light of the content of that document and in light of what was thought to have been a "more nuanced" approach than had been taken by the above country guidance cases, in another country guidance case that of *IM and AI (risks – membership of Beja tribe, Beja congress and JEM*) Sudan CG [2016] UKUT 188 (IAC), the tribunal decided that the claimant could safely live in Khartoum and that it would be reasonable to expect him to relocate there.

4. Permission to appeal was granted because it was thought that the tribunal had arguably erred in law through failing to adequately explain why it was departing from the earlier two country guidance cases referred to above. Permission having been granted the matter was listed for a hearing before the Upper Tribunal (before me) so that it could be decided whether there had been an error of law and, if so, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative.

5. Mr Mills referred me to the recent decision of the Upper Tribunal in *AAR and AA (non-Arab Darfuris – return) Sudan* [2019] UKUT 00282 (IAC) in which it had been said that the situation in Sudan remains volatile after protests in that country in late 2018, that the future was unpredictable, and that there was currently insufficient evidence available to show that the guidance given in the cases of *AA* and *MM* referred to and fully cited above required revision. Mr Mills stressed that it was nevertheless the Secretary of State's position that there had been some changes for the better in Khartoum but he accepted in light of *AAR and AA* that the tribunal ought to have applied the guidance in the earlier cases and had erred in not doing so. So, he very fairly, properly and correctly acknowledged that the claimant's appeal ought to have succeeded. In those circumstances there was nothing further for Mr Howard to add.

6. Accordingly, I have decided to allow the claimant's appeal to the Upper Tribunal; to set aside the tribunal's decision and to re-make the decision by allowing the claimant's appeal from the Secretary of State's decision of 18 December 2018 on asylum grounds and, on the basis of the same reasoning, on human rights grounds (Article 3 of the ECHR only).

7. I would stress, though, that the tribunal cannot at all be criticised for not taking account of what had been said in *AAR and AA*. That decision had not been issued by the Upper Tribunal when the tribunal decided this appeal.

Decision

The claimant's appeal to the Upper Tribunal is allowed. The tribunal's decision of 18 March 2019 is set aside. The decision is remade in these terms: the claimant's appeal against the Secretary of State's decision of 18 December 2018 is allowed on asylum grounds and on human rights grounds under Article 3 of the ECHR.

The First-tier Tribunal granted the claimant anonymity. Nothing was said about that before me. However, I have decided to continue that grant. I do so under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall identify the claimant or any member of his family either directly or indirectly. This applies to all parties to the proceedings. Failure to comply by any person may lead to contempt of court proceedings.

Signed: **Dated: 8 January 2020**

M R Hemingway
Judge of the Upper Tribunal