



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

Appeal Number: RP/00046/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34
On 3 July 2020**

**Decision & Reasons Promulgated
On 20 July 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**RM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant was born in 1963 and is a male citizen of Sudan. He appealed to the First-tier Tribunal against a decision of the respondent, dated 25 April 2019, to refuse his human rights claim having made, on the same date, a deportation order. The First-tier Tribunal, in a decision promulgated on 11 December 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. On 17 April 2020, the Upper Tribunal issued directions indicating that it had reached a provisional view that it would be appropriate to determine matters of error of law/setting aside the First-tier Tribunal decision without a hearing under Rule 34 of the Tribunal (Upper Tribunal) Rules 2008. The appellant's representatives have responded to those directions; the Secretary of State has not responded. I have considered the file generally and the submissions of the appellant's representatives very carefully. In my view, it is axiomatic that the First-tier Tribunal has erred in law and that this appeal should succeed. As a consequence, I have decided to set

aside the decision of the First-tier Tribunal without convening an oral initial hearing before the Upper Tribunal. In reaching that decision, I have had regard to the *Pilot Practice Direction: Contingency arrangements in the First-tier Tribunal and the Upper Tribunal* and to *Presidential Guidance Note No. 1 (2020): Arrangements during the Covi-19 Pandemic* (in particular, at [4]). I consider that, given that the error of law in this instance is obvious and touches directly upon the fairness of the hearing before the First-tier Tribunal, I have acted both fairly and reasonably by proceeding in this manner

3. Ms Radford of Counsel has drafted not only the appellant's response to the April 2020 directions but also a witness statement containing her statement of truth concerning events at the First-tier Tribunal hearing before Judge Webb on 8 November 2019. The accuracy of that statement has not been challenged by the respondent and I accept the contents as true and accurate.
4. I accept that Judge Webb did not refer at the hearing to events which had taken place in Sudan which post-dated the evidence contained in the bundles of the appellant and respondent. I accept that Ms Radford was not aware of those events. At [35], the judge had taken 'judicial note' (*sic*) that on 17 July 2019 political opponents in Sudan had reached an agreement, particulars of which he then provides. At [36], having detailed the evidence of which he taken 'judicial note' the judge writes that 'Counsel for the appellant nevertheless argues that there has been a serious deterioration in the situation in Sudan sufficient to make the previous country guidance case is largely obsolete that there is a real risk the appellant on return.' I accept the evidence of Ms Radford that she was given no opportunity to make submissions in respect of the events described by the judge at [35] or on the continued relevance of the extant country guidance. I find that this constituted an error of law. Further, in the subsequent paragraphs, I find that the judge has perpetrated the further error of deciding upon the weight to be given to the expert report of Mr Verney, upon which the appellant sought to rely, by reference to those matters upon which he had taken 'judicial note' and upon which he had not invited any submissions from the representatives. Further, by deciding to depart from the country guidance binding at the time of the hearing (*AAR & AA (Non-Arab Darfuris - return Sudan)* [2019] UKUT 0028(IAC)) in the light of evidence of which only he was aware, he perpetrated a further error of law. These are all matters which affected substantively the fairness of the hearing and which, in my opinion, undermine the judge's decision so fundamentally that it should be set aside.
5. There will need to be a hearing *de novo* before the First-tier Tribunal; given the nature of the error of law in this instance and the need for a new fact-finding exercise, it is not appropriate for the appeal to remain in the Upper Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing de novo.

Signed
Upper Tribunal Judge Lane

Date 2 July 2020

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.