



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

Appeal Number: UI-2022-000820
[PA/00442/2021]

THE IMMIGRATION ACTS

Heard at Field House

On 24 July 2023

**Decision & Reasons
Promulgated
On 26 July 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**AS
(ANONYMITY DIRECTION MADE)**

and

Secretary of State for the Home Department

Appellant

Respondents

Representation:

For the appellant: Mr Khan, Counsel instructed by Fountains Solicitors

For the respondent: Ms Ahmed, Senior Home Office Presenting Officer

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. This is a remaking of an appeal against the respondent's decision dated 26 January 2021 which refused the appellant's asylum and human rights appeal.
2. The appellant is a national of Sudan, born in 1992.
3. The appellant's profile is not disputed. He is from South Kordofan and is of Nuba ethnicity. He was detained by the authorities in September 2013 after attending a demonstration in Khartoum against rising food prices. He was mistreated in detention and released after a week. He was arrested again in Khartoum in August 2017 by the Janjaweed militia as he was suspected of being a member of an opposition group in the context of fighting between the government and ethnic minority militia. He was detained for 23 days and beaten and tied up during this detention. He was then handed over to the government forces and was further detained and tortured. He was released in September 2017 on condition that he provided information about rebel groups and on a reporting condition. He left the country 2 weeks later, claiming asylum in the UK on 14 June 2019.
4. Ms Ahmed was somewhat tentative in her submissions in light of the significant changes in the country situation in Sudan since the appellant's protection claim was refused. She conceded that she could not argue strongly against the appellant qualifying for a grant of humanitarian protection (HP) given the fighting that erupted in Sudan in April 2023, effectively a civil war, which was ongoing. She was also aware that a colleague had indicated in an email to the Tribunal dated 5 June 2023 that the appellant's case had been "allocated for decision making with a view to granting HP."
5. Ms Ahmed did suggest that the appellant might be able to return to an airport in Kadugli in South Kordofan, the appellants home area, allowing him to go to a part of the country where the hostilities were not thought to be so serious as to amount to a situation of indiscriminate violence giving rise to a need for humanitarian protection. Ms Ahmed did not know if the respondent had ever effected removals to Kadugli airport or whether it was functioning, the country material showing that Khartoum airport and Sudanese airspace are closed.
6. Mr Khan maintained that the appellant's profile showed that he would be at risk of mistreatment on return to Sudan on the basis of his perceived political profile. He had a history of detention by the authorities and the Janjaweed, now operating as the Rapid Support Forces (RSF), who are at war with the Sudanese government. He was detained because he was from an ethnic minority and was suspected of opposition activities. Any profile of opposition or suspicion of support for ethnic minority rebels would be highly likely in the context of the current hostilities to lead to mistreatment by the government and/or RSF if the appellant returned.
7. The most recent country guidance case on Sudan has been superseded by the events of April 2023 onwards. KAM (Nuba - return) Sudan CG [2020]

UKUT 00269 (IAC) considers risk on return as of August 2020 when the Transitional Military Council (TMC) were governing the country after the overthrow of General Al-Bashir.

8. The current information on the situation in Sudan shows the country to be in a situation of civil war, with large parts of the country being significantly affected. The respondent's Country Policy and Information Note on the security situation in Sudan dated June 2023 states:

“On 15 April 2023, following weeks of tensions, fighting broke out between the Sudan Armed Forces (SAF), led by Abdelfattah al-Burhan, and the Rapid Support Forces (RSF), a paramilitary force led by Mohamed ‘Hemedti’ Hamdan Dagalo, in multiple cities across the country. Significant clashes occurred in Khartoum, Al Fasher in North Darfur, El Obeid in North Kordofan, Nyala in South Darfur, Kassala in Kassala and Port Sudan in Red Sea. Fighting was reported in 13 out of Sudan's 18 States.

Since then, clashes between the SAF and RSF, and insecurity as a result of inter-communal conflict, has been concentrated in and around Khartoum, the Darfur states, and North Kordofan. Khartoum has seen the heaviest fighting and large areas of the city remain contested and it is unclear which armed party controls key infrastructure and installations. Despite attempts by international actors to broker ceasefires, the fighting continues.

Hundreds of civilians have been killed and thousands more injured have been reported, although the actual number is likely to be higher. The insecurity has led to internal displacement of over 1.2 million people with a further 400,000 choosing to leave the country.

The fighting has also damaged homes, shops, schools, water and electricity installations, mosques, hospitals, and other health facilities resulting in shortages of food, water, medicine, fuel and electricity.

The conflict has restricted travel both by air and road. Sudan airspace remains closed to civilian flights and fighting continues around Khartoum International Airport. Major battles have also centred in urban areas along major roadways. Nonetheless, hundreds of thousands of people have managed to escape in search of safety in other parts of Sudan and neighbouring countries.”

9. The CPIN continues:

“3.1.1 At the time of writing armed conflict between the Sudan Armed Forces (SAF) and the paramilitary Rapid Support Force (RSF), which began on 15 April 2023, continues to occur across Sudan, the nature and severity of which vary by location and over time (see Security situation post 15 April 2023).

3.1.2 In general:

- the levels of indiscriminate violence in Khartoum, and its immediate hinterland, Darfur and North Kordofan are at such a high level to mean

that there are substantial grounds for believing there is a real risk of serious harm to a civilian's life or person solely by being present there.

- in all other parts of the country, while periodically experiencing armed conflict between the SAF and RSF and inter-communal violence, the level of violence is not at such a high level as to mean there is a real risk of serious harm to a civilian's life or person solely by being present there.

3.1.3 However, the situation remains volatile and each case will need to be considered on its facts."

10. The CPIN also sets out:

"3.1.12 Even where there is not in general a real risk of serious harm by reason of indiscriminate violence in a situation of armed conflict, decision makers must consider whether there are particular factors relevant to the person's circumstances which might nevertheless place them at risk. The more a person is able to show that they are specifically affected by factors particular to their personal circumstances, the lower the level of indiscriminate violence required for them to be at a real risk of serious harm."

11. In my judgment the accepted profile of the appellant set against the current country information is sufficient to show that he would face a real risk of ill-treatment on return on the basis of his political opinion or perceived political opinion. His history is one of suspected membership of rebel ethnic groups, in part because of his own minority ethnicity. He has been detained by the authorities and the Janjaweed who now make up the RSF who are now fighting the government for control across large parts of Sudan. The appellant has not sought to argue that his profile is any higher than unfounded suspicions of involvement with rebels but this was sufficient to lead to detention and serious mistreatment in the past. . It is now a well-understood principle that the appellant cannot be expected to be untruthful if asked about his profile. The country evidence suggests that it is not possible to return individuals to Sudan at present but if the appellant could be returned, he could expect to encounter government and/or RSF forces in or around Khartoum airport and in Greater Khartoum. The indiscriminate violence in those areas is accepted by the respondent to show a real risk of serious harm merely by being present there. Nothing suggests there would be a possibility of return to any other airport or that if there was that the appellant would not encounter government security there. He would have to provide personal details and be truthful about his profile including his history in Sudan and in the UK. In my view the appellant's profile of previous detention as a suspected member of rebel forces is sufficient in the very volatile situation now pertaining in Sudan for him to face a real risk of serious mistreatment on return by either the government or the RSF.

12. I therefore find that the appellant has shown that he will face a real risk of persecution for a Refugee Convention reason on return and will also face a risk of inhuman and degrading treatment. The appeal must therefore be allowed on asylum and Article 3 ECHR grounds.

Decision

13. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
14. The appeal is remade as allowed on asylum and human rights grounds.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 26 July 2023