



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

Appeal Number: PA029082016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 April 2017**

**Decision & Reasons  
Promulgated  
On 22 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**M A J I  
(ANONYMITY DIRECTION MADE)**

**and**

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

Appellant

Respondent

**Representation:**

For the Appellant: Ms S Gunamal, Solicitors of Duncan Lewis & Co Solicitors (Harrow Office)

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sudan, date of birth [ ] 1998, appealed against the Respondent's decision dated 17 February 2016 to refuse a protection

claim and to refuse a general claim to remain based on private life under the Rules.

2. An appeal against that decision came before First-tier Tribunal Judge Turquet (the Judge) who, in a decision [D] promulgated on 17 October 2016, dismissed the appeal under asylum, Humanitarian Protection and human rights grounds. Permission to appeal was given by Upper Tribunal Judge Plimmer on 31 January 2017.
3. The judge rejected the Appellant's claim and in doing so concluded that he could be returned to Sudan and that he was not at risk by reference to him being a non-Arab Darfuri.
4. The judge identified the correct burden and standard of proof. Although in her determination she makes reference to 'her satisfaction', 'her being satisfied', which certainly may give the appearance that it is not clear what standard she was actually applying. It is trite law that both parties to an appeal are entitled to give sufficient and adequate reasons to explain why they have won or lost the appeal. In this case the Appellant was under the age of 18, at the time he came to the UK when he underwent his screening interview, asylum interview and making a statement with the help of representatives.
5. As Mr Bramble rightly points out, there is no medical evidence of the Appellant's claim to be dyslexic. It is known dyslexia may affect recollection as well as presenting educational problems. In any event, the judge makes passing reference to the Appellant's age, to his claim to suffer from dyslexia, but in her analysis fails to identify any particular considerations that would have been pertinent to someone who was at material times under the age of 18: Not least given his history of when he left his home area and the circumstances where he went to live elsewhere in Sudan.

6. The principal criticism as it first started out in the grounds, upon which permission was given by Upper Tribunal Judge Plimmer appeared to be principally directed at what was said to be the somewhat unquestioning repetition of the Respondent's objections to the Appellant's claim: In effect the judge had unquestioningly adopted those criticisms. However, it became apparent that in fact much of what the judge said was not actually challenged in terms of factual matters which the Respondent had taken a view on. Rather, the actual criticism was the Judge's failure to properly address the risks that the Appellant might face as a non-Arab Darfuri, who has lived in the United Kingdom, claimed asylum here and identified fears on return.
7. Submissions were made that with respect to the country guidance case of MM (Darfuris) Sudan [2015] UKUT 10 (IAC), whilst the judge had made reference to the case, he had not seriously considered the implications of return of the Appellant but had largely traversed them on the basis of a general approach to consistency and credibility supported by the Respondent's decision.
8. It seems to me that there must be a risk that if properly written the same decision would be arrived at. Therefore I have carefully considered whether the errors, such as they are, are material to the outcome. On balance it seems to me when there is an expectation of sufficient and adequate reasons. This is one of those cases where the decision might well be different but similarly it is not inconceivable that it would be the same.
8. It seems to me that the correct course is that the Original Tribunal's decision should not stand and that the matter will have to be re-made with particular reference to the evidence addressing the issue of 'non-Arab Darfuris' and the return in that context of the Appellant. As far as I can see the case can properly be dealt with in the First-tier Tribunal (IAC).

9. The Original Tribunal decision does not stand. The case will be returned to the First-tier Tribunal for a re-hearing.

### **DIRECTIONS**

1. Time estimate of three hours.
2. An Arabic/Sudanese interpreter is required.
3. The Appellant plus one - witness's identity and nationality to be notified to the Respondent.
4. Any expert evidence to be served not later than ten working days before the further hearing in the First-tier Tribunal.
5. Any medical evidence that is relied upon to be served as in 4 above.
6. The issues will relate to the return of a non-arab Darfuri, the Refugee Convention, Humanitarian Protection and Articles 2 and 3 ECHR grounds. Further issue if advised and to be notified to the First-tier Tribunal, IAC, whether or not a private life claim is being pursued under the Rules or under Article 8 ECHR.
7. Anonymity order to continue.

### **NOTICE OF DECISION**

The appeal is allowed to the extent the matter is to be remade in the First-Tier Tribunal.

### **DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11 May 2017

Deputy Upper Tribunal Judge Davey