Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01763/2018**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 7 November 2018	**On 20 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor, Fountain Solicitors
For the Respondent: Miss G Abonie, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Sudan, date of birth 1 January 1987, applied for protection on the basis of political asylum, Humanitarian Protection grounds on 29 August 2017. The Appellant's application was refused by the Respondent on 30 January 2018. His appeal against that decision came before First-tier Tribunal Judge Gribble (the Judge) who on 12th March 2018 dismissed the appeal. Permission to appeal was granted on 12th April 2018, there is no Rule 24 response from the Secretary of State.

2. The principal ground of real substance turns on the continuing applicability of the country guidance cases of AA [2019] UKAIT 0056 and MM (Darfuris) Sudan CG [2015] UKUT 00010. The question that was posed to the Judge was whether or not the country policy information note was sufficient to demonstrate that circumstances had moved on in relation to the Sudan and in particular to the risks to Non-Arab Darfuris which it was accepted the Appellant is. The issue raised is really whether there is a continuing problem, for example in Khartoum. For the reasons given the Judge departed from the country guidance and concluded, not least because the Appellant's account was not believed, albeit he is a Non-Arab Darfuri, that he was not at risk were he to return to Khartoum and would face no real risk of persecution because of his ethnicity. Therefore there was no Convention reason and it similarly followed that there was no serious risk of harm on a return to Khartoum.

3. Mr Howard drew my attention to the background information which was provided to the Judge and in particular to a number of pages from different authors or organisations which spoke of the clearly poor position for Non-Arab Darfuris: Also dealt with, to a degree, in the country policy information note from 2017. Certainly, it was not the basis for optimism as to how Non-Arab Darfuris would be treated. The case of SG (Iraq) [2012] EWCA Civ 940 is a familiar case on the point that country guidance should not be departed from unless there are cogent, very strong grounds to do so and the evidence adduced justifies moving on from the conclusions that the country guidance Tribunal had reached. It seemed to me that was a completely trite proposition but the fact was that the Judge did not, by reference to the background evidence, seem to enter into any consideration of the totality of it: Rather than simply relying on the information note as demonstrating the likelihood that the Appellant would be safe in Khartoum, whether as a failed asylum seeker or as a Non-Arab Darfuri. In the circumstances I conclude the Judge's consideration of that critical issue bearing in mind that it is not simply determined by the

credibility of the claim once it was accepted that the Appellant is a Non-Arab Darfuri.

4. For these reasons therefore I find the superficial approach taken to the background evidence, which was largely unacknowledged despite the various and reliable sources well-regarded and frequently used, showed that there has been a material error of law in failing to provide proper and adequate reasons for the decision or in the conclusion that the Appellant does not face or would not be likely to face the real risk of persecution because of his ethnicity on return. A subsidiary issue raised relates to whether or not there were very significant obstacles to reintegration into Sudan as a member of the Fur ethnicity. I conclude the Judge failed to properly address that issue at all which is somewhat surprising when the Secretary of State had raised, as the Judge acknowledged, the point that there were no exceptional circumstances: Putting aside whatever is the correct test but there were no very significant obstacles to reintegration. The Judge never dealt with that. It might be assumed that the Judge did not expressly deal with it because he thought there was no merit. He may be right about that. It is not my place to comment but I have to say it is inadequate to properly address what was an issue raised before the Judge, whatever the merits may have been: At this stage I cannot form a view on their merits in any event and it seems to me that the matter, insofar as it remains of continuing interest in the conduct of the appeal, needs to be addressed by the remaking of this decision.

5. I was therefore satisfied that that matter was an error of law and the Original Tribunal's decision cannot stand.

NOTICE OF DECISION

6. The Original Tribunal's decision cannot stand. The appeal is allowed to the extent that the matter must be remade in the First-tier Tribunal on all issues.

7. An anonymity order was made and is continued.

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 12 December 2018

Deputy Upper Tribunal Judge Davey