



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

Appeal Number: PA/09885/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15th February 2018**

**Decision & Reasons
Promulgated
On 7th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**GA
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Oshunrinade, Samuel & Co Solicitors
For the Respondent: Mrs Aboni

DECISION AND REASONS

EX TEMPORE JUDGEMENT

1. **Order Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**
2. 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 order applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

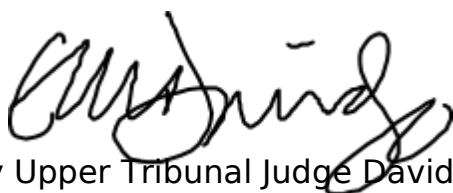
3. The Appellant appeals a decision of the First-tier Tribunal promulgated on 9th November 2017 and given by Judge Moore in which the judge dismissed his appeal against the refusal of asylum. The Appellant was granted permission to appeal by the First-tier Tribunal on 6th December 2017 on the ground that it was arguable the judge had failed to properly apply the relevant country guidance.
4. Before me Mr Oshunrinade submitted that the relevant country guidance was that which was put before the First-tier Tribunal in the Appellant's bundle and was the case of AA (Non-Arab Darfuris - relocation). The judge noting that case was some eight years old and that there had been a subsequent consideration of the position in Sudan in IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 00188 (IAC) applied considerations set out in the headnote of that case which are applicable to Sudanese asylum seekers who are not non-Arab Darfuris. That is clarified at paragraphs 216 and 217 of the country guidance case. In that case the first Appellant IM although a member of a non-Arab tribe the Beja tribe was not a Darfuri and in that context his position did not fall within the earlier country guidance case of AA. The second Appellant A1 did claim to be a non-Arab Darfuri from the Berti Tribe, but that claim was found not to be made out, although it appears it was accepted he was from Darfur he was unable to establish an alternative basis of risk to ethnicity through political activism, his claim also failed.
5. Mrs Aboni submitted that given the date of the AA case which was in 2009 and the changes that occurred in Sudan then the current country information relied upon by the Respondent showed that there were material country circumstances or factors which would mean that AA should not apply. However, Mrs Aboni was unable to take me to anything in the evidence which before the judge which would have justified such a departure, and the judge his or herself does not rely on any specific country information that was put before her or him. I understand that the country information to which Mrs Aboni refers and which is not before me, is in any event of a later period.
6. I find there is merit in the appellant's arguments. Looking at paragraphs 36 to 38 of the judge's decision it is apparent that the judge has mistakenly found that the case of IM has a material impact on the case of AA. In those circumstances my conclusion is that the judge has fallen into legal error when applying the country guidance case of IM and mistakenly found that it operated in order to reduce the case of AA when in fact the decision makes it clear that it does not do that. Ms Aboni's arguments go to materiality but for the reasons set out above are arguments that might have been offered but were not and do not operate to save the decision.

7. Both of the representatives were in agreement that in the event that I found an error on the grounds the right course of action would be for me to remake the decision and, there being no other possible outcome applying the relevant country guidance on the unchallenged findings of the First-tier Tribunal that he is a member of the Berti Tribe and from Darfur, allow the Appellant's appeal.

Decision

The decision of the First-tier Tribunal dismissing the Appellant's appeal is set aside. I remake the decision allowing the Appellant's appeal on international protection grounds

Signed



Date 15 February 2018

Deputy Upper Tribunal Judge Davidge