



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

Appeal Number: PA/08973/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 21 December 2018**

**Decision and Reasons Promulgated
On 22 January 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

ABDUL ADAM YEHYA

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain (Counsel)
For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") which it made after an oral hearing of 6 July 2018 and which it sent to the parties on 18 July 2018; whereupon it dismissed his appeal from the Secretary of State's decision of 1 September 2017 refusing to grant him international protection.

2. Shorn of all but essential detail, the relevant factual history is as follows: The claimant is a male citizen of Sudan. He was born on 1 March 1988. He claims to have left Sudan in early 2014 and recounts travelling through Libya, Italy and France prior to entering the United Kingdom

(“UK”), clandestinely, on 8 March 2017. It is recorded that he claimed asylum on the same day. The Secretary of State, in considering the claim, accepted that he is a national of Sudan and that he is a non-Arab Darfuri and a member of the Tama Tribe. Despite her acceptance of those potentially significant aspects of the claim, the Secretary of State issued a decision refusing to grant international protection. She took that decision because, notwithstanding the difficulties which non-Arab Darfuris are likely to experience in Darfur, she considered that he could safely internally relocate to Khartoum and it would not be unreasonable to expect him to do so. So, when the claimant appealed to the tribunal, that was the key issue for it to decide.

3. The tribunal, in fact, having noted the Country Guidance case of *AA (non-Arab Darfuris - relocation) Sudan CG* [2009] UKAIT 00056 (18 December 2009) and the less directly relevant Country Guidance case of *MM (Darfuris) Sudan (CG)* [2015] UKUT 10 (IAC) (5 January 2015), decided that there had been a change of circumstances in Sudan and in particular in Khartoum since those cases had been decided. Had those cases been followed it would almost certainly have been concluded that the claimant could not internally relocate to Khartoum. However, after considering, with considerable care, the background country material and the competing arguments which had been put to it, the tribunal decided it was legally permissible to and that it should depart from Country Guidance.

4. As indicated, permission was given to appeal to the Upper Tribunal and at the hearing of 21 December 2018, the parties addressed me as to whether or not the tribunal had erred in law such that its decision ought to be set aside.

5. Mr Hussain, in a nutshell, argued that there was insufficient material before the tribunal to enable it to lawfully depart from Country Guidance. He also argued that, in any event, in considering whether this claimant could return to Khartoum the tribunal had failed to consider, as it was required to do, his individual circumstances and characteristics. Rather, argued Mr Hussain, it had simply decided that he could relocate there because of its view that non-Arab Darfuris are not persecuted in Khartoum whereas the assessment needed to be broader than that. Mr Diwnycz indicated he would “stand behind the rule 24 reply” which had been submitted on behalf of the Secretary of State and which indicated, albeit not in any detail, that the appeal was opposed.

6. Mr Hussain spent a good deal of time upon what was really his primary argument to the effect that the decision to depart from Country Guidance, on the available material, was unsustainable. But the tribunal had quite extensive material and, in any event, was entitled to reach a view on the material which the parties had given to it. Although I do not need to set it out in view of the alternative conclusion I have reached, the tribunal undertook a very thorough consideration as to whether or not it should depart from Country Guidance decisions in a passage running from paragraphs 27-36 of its written reasons. It is not necessary for me to decide, for myself, whether the Country Guidance should or should not continue to be followed. But I am not persuaded that it was not open to the tribunal itself to depart from Country Guidance for the reasons it gave. Nevertheless, I have decided its decision has to be set aside for the reason which I will now explain.

7. With respect to internal relocation to Khartoum the tribunal said this:

“36. ... I find on the basis of the joint report and the Home Office CPIN of August 2017 that there are substantial numbers of non-Arab Darfuris residing in the Greater Khartoum area and that although there may be discrimination in relation to employment against non-Arab Darfuris, this falls short of persecution. It is of course necessary to apply the particular circumstances of the appellant to the background information. In this case, I find that the appellant would not be of significant interest to the authorities as a result of his previous arrests. As previously

indicated, I find that that arrest was based upon his geographical location rather than any specific political activism on his part and that the appellant would not be of interest to the authorities on the basis of his previous history or because of his ethnicity. Having considered all of the circumstances in the round, particularly the individual circumstances of the appellant, I find that there are strong grounds supported by cogent evidence of change which is well established and durable and sufficient to depart from the previous Country Guidance. I therefore find that if returned to Khartoum, the appellant would not face risk of persecution and the appellant could be safely relocated to Khartoum. In all of the circumstances, I do not find that the appellant has a well-founded fear of persecution on return to Sudan and I dismiss his asylum appeal.”

8. I appreciate that, in that passage, the tribunal did remind itself that it must consider the individual circumstances of the claimant. But it did not, in substance, conduct an inquiry as to the those circumstances and his characteristics other than asking and answering in the negative the question of whether or not he would face persecution in Khartoum. Its general consideration as to internal flight had to have a somewhat wider scope than that and I accept Mr Hassain’s submission on that point which was not expressly opposed, at least not in terms, by Mr Diwnycz. So, with regret because of what is otherwise it seems to me a most impressive consideration of the Country Guidance departure issue, I must set aside the tribunal’s decision.

9. Having decided to set aside the decision I have concluded the best way forward is for me to remit to the First-tier Tribunal for reconsideration without my preserving anything of the tribunal’s decision. I have so decided because it does seem to me that, notwithstanding my view that the Country Guidance outcome was open to the tribunal for the reasons it gave, there is scope for another tribunal, properly directed, to reach a different view. If I am remitting I do not consider it to be appropriate for me to tie the hands of the tribunal in any way.

10. My having decided to remit, I am statutorily obligated to issue directions. But since I do not want to step on the first tribunal’s toes, they are brief. They are as follows:

- A. The decision of the First-tier Tribunal which it made on 14 July 2018 and which it sent to the parties on 18 July 2018 is set aside.
- B. The First-tier Tribunal shall conduct a complete rehearing of the appeal. The rehearing shall take place before a different Judge to the one who decided the appeal on 14 July 2018. Alternatively, if the appeal is to be considered by a panel, that panel should not include that Judge.
- C. These directions may be replaced, amended or supplemented at any time by any salaried judge of the First-tier Tribunal in the Immigration and Asylum Chamber.

Decision

The making of the tribunal’s decision of 14 July 2018 (sent on 18 July 2018) involved the making of an error of law. Accordingly, that decision is set aside.

The appeal is remitted to the First-tier Tribunal for rehearing in accordance with the directions set out above.

Anonymity

I make no anonymity direction. No such direction was made by the First-tier Tribunal and none was applied for before me.

Signed

M R Hemingway
Judge of the Upper Tribunal

Dated

22 January 2019