



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

Appeal Number: PA/12011/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 March 2019**

**Decision & Reasons Promulgated
On 17 April 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M

(ANONYMITY DIRECTED)

Respondent

Representation:

For the Appellant: Mrs R Pettersen (Senior Home Office Presenting Officer)

For the Respondent: Mr T Hussain (Counsel)

DECISION AND REASONS

1. This is the Secretary of State'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 which it made on 2 July 2018, following a hearing of 15 June 2018 and which it sent to the parties on 5 July 2018. Its decision was to allow the claimant's appeal from the Secretary of State's decision of 3 November 2017 refusing to grant him international protection.

2. By way of brief background, the claimant, who was born on 20 April 1993, is a Sudanese national hailing from Darfur. He is a member of the Tanjur tribe and is not, therefore, of Arab ethnicity. He applied for international protection in the United Kingdom (UK) on 9 May 2017, claiming to have been targeted by the Janjaweed militia who had harmed members of his family. It was also part of his claim that he could not be expected to internally relocate to Khartoum.

3. The tribunal did not find everything the claimant had said to be truthful. But it did accept that as a member of a non-Arab Darfuri tribe, he would face a real risk of serious harm if he were to return to Darfur in Sudan. Its finding as to that has not been the subject of further challenge. As to internal flight to Khartoum (the only place suggested as a viable destination within Sudan) it concluded that, following the applicable country guidance decisions of *AA (non-Arab Darfuris - relocation) Sudan* CG [2009] UKAIT 00056 and *MM (Darfuris) Sudan* CG [2015] UKUT 10 (IAC) it would be unduly harsh to expect him to relocate there. As to the question of departure from country guidance on the point, it said at paragraph 29 of its written reasons of 2 July 2018 "I am bound by the country guidance on Sudan as expressed in *AM* and *MM*, as there is insufficient evidence to demonstrate the situation has changed significantly to allow me to depart therefrom". The reference to *AM* was clearly intended to be a reference to *AA*.

4. The Secretary of State, in seeking permission to appeal, contended that since it had been argued before the tribunal that it should depart from country guidance and since reliance had expressly been placed as to that upon information contained in the Country Policy and Information Note (CPIN) relating to non-Arab Darfuris of August 2017, the tribunal had been required to say more than it did by way of explanation for its conclusion that departure was not appropriate. In short, it was said it had not engaged with the evidence and the argument provided by the Secretary of State on the point. Permission to appeal was granted on that basis and the matter was then listed for a hearing before the Upper Tribunal (before me) so that consideration could be given as to whether the tribunal had erred in law and, if so, what should flow from that. The directions made provision for any necessary remaking of the decision to be undertaken at the same hearing. Representation at that hearing was as stated above and I am grateful to each representative for their assistance and their practical and straightforward approach.

5. Mrs Pettersen relied upon the grounds as submitted. Mr Hussain, once I had made him aware of the fact that the tribunal's record of proceedings did demonstrate that the argument regarding departure had been put to the tribunal, acknowledged that its failure to address the evidence in the CPIN in more detail amounted to "an omission". That was realistic of him and, in the face of no persuasive argument that I should do otherwise being offered, (or indeed being available) I have decided that I should set aside the tribunal's decision. That is because it did fail to engage with the evidence presented to it by the Secretary of State as contained in the relevant CPIN. It failed, therefore, to give adequate reasons for its decision with respect to internal flight. But I would wish to stress that, other than that, I regard the tribunal's written reasons as being careful, thoughtful and impressive. Although in light of the

above I must set aside the tribunal's decision I have, therefore, decided I should preserve its findings as to risk the claimant would face as a non-Arab Darfuri, in Darfur.

6. Both representatives, once I had informed them that I was setting aside the tribunal's decision on the above basis, indicated they were content to immediately proceed to the remaking of the decision. There was no need for any further evidence as a prelude to remaking and so no need for matters to be put back for a further hearing on a different date. The sole issue as to remaking, in light of the above, was whether I should or should not depart from country guidance. The test for doing so is well established albeit that it has been stated in a number of different ways but, essentially, I was tasked with deciding whether the evidence before me amounted to cogent evidence of a durable change in Khartoum such that it was not now, generally speaking, unduly harsh to expect a non-Arab Darfuri to relocate to Khartoum.

7. Mrs Pettersen argued that I should conclude that there had been sufficient relevant change in Khartoum. She relied upon the August 2017 CPIN. There was some discussion regarding paragraph 2.3.9 and 2.3.10. of that document. It is stated, therein, that reports are now available indicating that whilst non-Arab Darfuris have reported discrimination in Khartoum such persons are no longer the victim of widespread systemic targeting on the grounds of ethnicity. It is further stated that, in fact, there is now "a significant and established population" of non-Arab Darfuris living in Khartoum.

8. I accept that what is contained in the CPIN is sufficient to give me pause for thought as to whether or not I should be satisfied that the relatively stringent test for departure from country guidance has been met. It is by now some very considerable period of time since *AM* was decided and even *MM* might be thought to be a little dated. If there are, indeed, non-Arab Darfuris living in Khartoum then that is capable of suggesting that it will not be unduly harsh, ordinarily, to expect such persons to relocate there. But the previous country guidance decisions did involve detailed consideration of a great deal of relevant background material then available. All that has been placed before me to evidence material change is the CPIN itself. There are references in there to a Danish-UK fact finding mission which resulted in the production of a report; to an Australian Government report of April 2016 and also to some information from the Foreign and Commonwealth Office. But those reports/documents were not themselves placed before me though I do note there is attached to my copy of the CPIN a letter of 29 September 2016 written by the ambassador to the British Embassy in Khartoum suggesting that concerns of discrimination for non-Arab Darfuris in Khartoum "are not overriding". That letter is relatively brief and does not clearly indicate the source of the information contained within it. Whilst the CPIN does refer to sources such as the above reports, those reports have not themselves been provided. In the circumstances, and whilst not purporting to issue Country Guidance myself (this is not a Country Guidance case) and whilst not purporting to make a decision which would bind any other judge at any level, I am not persuaded on the basis of the material currently before me that departure from Country Guidance is yet appropriate though I do not discount the possibility that I might have concluded otherwise

had the above reports been made available to me. But, of course, that would have depended upon what I had made of those reports and I do not know what I would have made of them.

9. In the circumstances, therefore, whilst I have set aside the tribunal's decision I have gone on to remake the decision in the same terms and to allow the claimant's appeal from the decision of the Secretary of State.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. In remaking the decision, the Upper Tribunal allows the claimant's appeal from the Secretary of State's decision of 7 November 2017. It does so on asylum grounds (race) and on human rights grounds under Article 3 of the European Convention on Human Rights.

Signed:

Dated: 11 April 2019

Upper Tribunal Judge Hemingway

Anonymity

The First-tier Tribunal granted the claimant anonymity. I continue that grant under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall identify the claimant or any member of his family. The grant applies to all parties to the proceedings. Failure to comply may result in contempt of court proceeding.

Signed:

Dated: 11 April 2019

Upper Tribunal Judge Hemingway

To the Respondent

Fee award

Since no fee is payable and since I have allowed the appeal, there can be no fee award.

Signed:

Dated: 11 April 2019

Upper Tribunal Judge Hemingway

