



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

Appeal Number: PA/13193/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 8th July 2019**

**Decision & Reasons Promulgated
On 22nd August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**ABDULKARIM [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes (Counsel)

For the Respondent: Mr C Bates (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Morris, promulgated on 3rd January 2019, following a hearing at Manchester on 18th December 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sudan, who was born on 5th October 1993. He appealed against the decision of the Respondent Secretary of State refusing his claim for asylum and humanitarian protection pursuant to paragraph 339C of HC 395, such a decision being dated 12th February 2018.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a Sudanese national from the Falata tribe. His problems began in 2010 when the Janjaweed began terrorising his village. They beat up the Appellant and his father. They told him to go back to Darfur. They also cut the water supply coming to the land. The Government officials owned the neighbouring land. Therefore, armed gunmen then came and demanded the Appellant and his father work for them. Whenever the Appellant built a small house on his land to live the government would come and destroy it saying they had no right to be there. In 2014 armed men from the Government came to their farm and told his father that they would take half the profits from the harvest. The Appellant refused and they beat him up. On 5th June 2014 Government forces came to the farm of the Appellant and tied his hands together and put a hood over his head. He was put in a vehicle and taken to an unknown destination where he was detained. Upon release on conditions, the Appellant after July 2014 was helped by his uncle to leave Sudan. He had travelled to Libya. He then went to Italy. He arrived in the UK on 19th August 2015. He could not now return to Sudan. He fears persecution and ill-treatment as a member of the Falata tribe.

The Judge's Decision

4. The judge found the Appellant to be inconsistent and lacking in credibility in his account (paragraph 37). The judge held that the Appellant's account that he is systematically targeted by the Government is not borne out by the objective evidence. Accordingly, he had also failed to satisfy the judge as to the existence of the Convention reason of race (paragraph 40). The appeal was dismissed.

Grounds of Application

5. The grounds of application state that the judge's approach to the Appellant's ethnicity was misconceived. At paragraph 40 the judge accepted the submission made for the Respondent (recorded at paragraph 28(vi)) that the "African" groups include the Falata and paragraph 5.1.1 of the CPIN notes that 70% of the population are Sudanese Arab and that the Falata are one of the other main ethnic groups. The judge was referred by the Respondent to the decision in **MM (Darfuris) Sudan (CG) [2015] UKUT 10**. The Respondent accepted that the Falata are not non-Arab Darfuri. The judge does not record any disagreement with the submission although paragraph 12 of **MM** makes it clear that the Falata are non-Arabs from Darfur.

6. On 29th May 2019 permission to appeal was granted.

Submissions

7. At the hearing before me on 8th July 2019, there was agreement between Mr Bates for the Home Office and Mr Holmes, that the judge had erred in law in failing to apply the relevant country guidance case in relation to non-Arab Darfuris of African descent. The relevant country guidance cases were **AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056** and **MM (Darfuris) Sudan CG [2015] UKUT 00010**. These make it clear that “all non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan”. The judge’s failure to give proper weight to the country guidance cases was a material error of law. For his part, Mr Bates also added that the judge had approached the matter on a misconceived basis from the outset by stating that “in making these findings I note that the issues in this appeal largely turn upon the credibility of the Appellant ...” (paragraph 32). That is not the case, submitted Mr Bates, if the country guidance case makes it clear that all non-Arab Darfuris are at risk of persecution. The only appropriate course of action, he submitted was to remit the matter back to the First-tier Tribunal.

Error of Law

8. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision, for the reasons that have been stated above.

Decision

9. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal pursuant to practice statement 7.2(b) of the practice statement because the judge has failed to have regard to the applicable country guidance cases and that are of fundamental importance to the position of non-Arab Darfuris such as the Appellant who belongs to the Falata tribe. The appeal would be heard by a judge other than Judge Morris.

10. No anonymity direction is made.

11. The appeal is allowed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

17th August 2019