Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13435/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 1st August 2019	**On 22nd August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MOHAMED [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. J. Howard (Solicitor)
For the Respondent: Miss H. Aboni, Senior HOPO

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge N M K Lawrence, promulgated on 6th February 2019, following a hearing at Birmingham on 29th January 2019. In the decision, 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, and was born on 29th January 1991. He appealed against the decision of the Respondent dated 20th November 2018, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a member of the "Birgid" tribe. He is a non-Arab from Sudan. He has been to university. The Sudanese security services have accused him of being involved in anti-Government activities. They have arrested him. They have detained him. They have also tortured and interrogated him. He cannot return back to Sudan for fear of risk of persecution on grounds of his ethnicity.

The Judge's Findings

4. The judge observed at the outset that this was a case where the Respondent Secretary of State "accepts, given what the Appellant said in the latter part of his AIR, that the Appellant is indeed a national of the Sudan and also of the claimed ethnicity" (paragraph 9). However, the rest of the Appellant's claim was not accepted.

5. The judge then went on to consider the claim. It was noted that in his witness statement (at paragraph 24) the Appellant has stated that "I believe I was treated in this way as I belong to Birgid". The judge thought that the reference to the words "I believe" indicated that this was only the Appellant's supposition (paragraph 13). The judge also observed that the Appellant's claim had undergone a "fundamental change" from how the claim had originally been put (paragraph 15). Having considered the Appellant's claim, the judge was of the view that "the entire basis of the claim is a fiction" (paragraph 18).

6. Thereafter, consideration was given to the country guidance cases, and in particular to the case of **IM and AI (Risks – membership of Beja etc.) Sudan CG [2016] UKUT 00188**, in which the Upper Tribunal set up the guidance in identifying persons who are at risk on return to Sudan. The judge observed that the latest guidance indicated that being a member of a particular ethnicity is not a risk factor per se. In particular, the Tribunal had made it clear that "it is apparent that not all those falling into a particular category are at risk" (at paragraph 203).

7. In fact, the Tribunal had gone on to say that:-

> "It is not enough, therefore, to be a journalist or a student because not all members of these groups are at risk. So, too, with ethnic or tribal classification. Not all non-Arabs are at risk; nor are all black Africans at risk …" (see paragraph 23 of the decision).

8. On that basis, the judge went on to conclude that the Appellant could not succeed, particularly given that he would have no difficulty in being able to reintegrate himself into Sudanese life on the basis of the decision in

Kamara [2016] EWCA Civ 813 (which was referred to by the judge at paragraph 26 of the decision).

Grounds of Application

9. The grounds of application state that the judge erred in not giving due effect to the spirit of the country guidance cases. It was accepted that the Appellant was a non-Arab Darfuri. That being so binding authority in the form of the country guidance case of **AA (non-Arab relocation) Sudan CG [2000] UKAIT 00056**, applied. This stated that all non-Arab Darfuris are at real persecutory risk on return to Darfur. Indeed, the country guidance case of **MM (Darfuris) Sudan CG [2015] UKUT 00010** had established that those were ethnic non-Arab Darfuri in origin, regardless of whether they had lived in Darfur or elsewhere in Sudan, would be at risk on return to Khartoum. That being so, regardless of whether the Appellant's claim was a credible one, his appeal fell to be allowed.

10. On 13th March 2019, permission to appeal was granted.

Submissions

11. At the hearing before me on 1st August 2019, Mr Howard, appearing on behalf of the Appellant, submitted that the judge had erred in law quite simply because he had failed to heed what was set out at paragraph 217 of **IM and AI [2016] UKUT 00188**, namely, that the previous country guidance cases were intact and fell to be applied. On that basis he should have succeeded even if there were doubts about his credibility.

12. For her part, Miss Aboni submitted that there was no material error of law at all. The judge had given adequate consideration (from paragraphs 23 to 25) to the applicable country guidance cases. He had cited expressly the relevant sentences there to demonstrate why simply being a member of a particular ethnicity or vocation did not any longer expose oneself to risk. That being so there could be no error of law here.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that it falls to be set aside. My reasons are as follows. My attention was taken to paragraph 217 of **IM and AI**, by Mr Howard. What this states is that:-

> "Our conclusions … leave this discreet area of the earlier Country Guidance intact and our own conclusions speak of more general risks. The only relevance of the specific risks faced by Dafuris is in building up the general picture of the government's attitude towards those it perceives to be a threat to its stability".

14. This is a case where the judge gave detailed consideration to the Appellant's ethnicity. The judge then set out to give sufficient reasons for why he would depart from the country guidance case of **IM and AI**. He

expressly referred to the fact that, "It is not enough to be a journalist or a student because not all members of these groups are at risk" (paragraph 23), this being based upon what was set out in the case of **IM and AI** itself. The Appellant in this case has been a student. The judge also referred to the fact that ethnic or tribal classification also was not in itself necessarily determinative.

15. Moreover, the judge gave express attention to the fact that in **IM and AI**, the Upper Tribunal considered (at paragraph 218) how Dr Alizadeh of the UNHCR had noted that "failed asylum seekers would not face severe problems upon return, as long as they are not recognized as a threat to the state". This was the particularly important question on the instant facts of this case. The judge had rejected the Appellant's claim as one that was "a fiction" (paragraph 18). The question therefore as to whether he posed a threat to the state was decidedly against him.

16. The plain fact is that the judge here did refer to the country guidance cases. He did cite the relevant authorities. He did have them in mind during the course of the decision making process that engaged them.

17. He set out the evidence in some detail. He noted specifically that there was an obligation to follow country guidance cases. Thereafter the reasons that he gave to justify departing from the country guidance case was entirely sustainable. There is no error of law.

Notice of Decision

18. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

19. No anonymity direction is made.

20. The appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Juss 17th August 2019