



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

Appeal Number: PA/13574/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2019**

**Decision & Reasons Promulgated
On 11 November 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**O A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, Counsel, instructed by Elder Rahimi Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Devittie (the judge) who, in a decision promulgated on 5 March 2018, dismissed the appellant's protection and human rights appeal against the respondent's decision of 7 December 2017 to refuse his protection and human rights claim.
2. This appeal has a somewhat long history. The appellant is a national of Sudan born in July 1999. Of material relevance is an acceptance by the respondent that the appellant is a member of the Maseeviy Al

Jabar tribe, and that he is therefore a non-Arab Darfuri (see paragraphs 69 to 72 of the Reasons for Refusal Letter and the Consent Order sealed by the Court of Appeal on 25 January 2019).

3. It is unnecessary to give a detailed account of the appellant's immigration history for reasons that will become apparent. The appellant maintains that he left Sudan illegally on 22 June 2015 in fear of the authorities based on his involvement with the Justice and Equality Movement (JEM) and that he eventually made his way to the UK arriving her illicitly on 8 July 2016. He claimed asylum based on his ethnicity (a non-Arab Darfuri) and his actual or perceived political involvement with the JEM. The respondent accepted his ethnicity but maintained that there had been a material change in the situation in Sudan since the promulgation of **AA (Non-Arab Darfurians - relocation) Sudan CG** [2009] UKAIT 00056 and **MM (Darfuris) Sudan CG** [2015] UKUT 00010 (IAC) such that it was appropriate to depart from those decisions. The respondent rejected the appellant's claimed involvement with JEM or that the Sudanese authorities would be interested in him even if he was so involved. The appellant appealed this decision to the First-tier Tribunal.
4. The judge considered the August 2017 CPIN provided by the respondent (with particular reference to a joint Danish/UK Fact-Finding Report) and an expert country report from professor Aguilar and a 2017 Human Rights Watch Report on Sudan provided by the appellant. The judge preferred the assessment contained in the CPIN report and concluded that it disclosed a material change in circumstances in respect of the treatment of non-Arab Darfuris in Khartoum. The judge then rejected the appellant's claimed involvement with JEM and found that he would not be of adverse interest to the authorities if removed to Sudan. The appeal was dismissed.
5. The appellant obtained permission to appeal to the Upper Tribunal. In a decision promulgated on 18 July 2018 Deputy Upper Tribunal Judge Hanbury found that the judge failed to give adequate reasons for finding that the country guidance in relation to the remainder of Sudan had materially changed such as to entitle the judge to depart from the CG decisions. The Deputy Upper Tribunal Judge was not however satisfied that this error was material and proceeded to dismiss the appeal.
6. The appellant obtained permission to appeal to the Court of Appeal. In an order sealed on 25 January 2019 the Court of Appeal allowed the appellant's appeal and set aside the Deputy Upper Tribunal Judge's decision on the basis that he failed to provide sufficient reasons for concluding that departure from the Country Guidance cases was inevitable and because he failed to provide adequate reasons in respect of the relevance of the appellant's illegal departure from

Sudan and in respect of his Article 8 human rights claim. The case was remitted back to the Upper Tribunal but was stayed pending the determination of pending Country Guidance cases that were due to be heard by the Upper Tribunal on 12 to 14 February 2019.

7. On 7 August 2019 the Upper Tribunal promulgated **AAR & AA (Non-Arab Darfuris - return) Sudan** [2019] UKUT 00282 (IAC). The headnote reads,

The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAUT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) requires revision. Those cases should still be followed.

8. At the error of law hearing Mr Melvin, capably representing the respondent, accepted that the judge had erred in law in departing from **AA** and **MM** and invited me to allow the appeal on the basis that the appellant was a refugee. Mr Hodson readily agreed.
9. Given that the respondent accepts that the judge erred in law in concluding that the evidence before him disclosed a material and durable change in circumstances in the position of non-Arab Darfuris in Khartoum, and given that the respondent accepts that the appellant is a non-Arab Darfuri, I have little hesitation in concluding that the judge failed to properly consider the nature of the background evidence before him and that he misdirected himself in concluding that the evidence entitled him to depart from the existing Country Guidance cases. I remake the decision. In light of **AAR & AA** and the respondent's acceptance of the appellant's ethnicity I am satisfied that the appellant is a non-Arab Darfuri and that, applying **AA** and **MM**, he would be exposed to a real risk of persecution if removed to Sudan. In consequence allow the protection appeal and, as a necessary corollary, the human rights appeal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and requires the decision to be set aside.

I remake the appeal allowing the appellant's asylum/protection appeal.

Given that the protection appeal is allowed, the appeal is additionally allowed on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

D.Blum

6 November 2019

Signed

Date

Upper Tribunal Judge Blum