Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/05266/2019 (V)

THE IMMIGRATION ACTS

Heard remotely by (via MS Teams) On 2 June & On 22 September 2021	**Decision & Reasons Promulgated On the 28th October 2021**

Before

UT JUDGE MACLEMAN

Between

M K

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Gajjar, instructed by Axis Solicitors Ltd, Ilford
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The decision in this appeal falls to be remade, in accordance with the decision of UT Judge Finch dated 28 May 2020, which should be read herewith.

2. A transfer order was made to enable the decision to be completed by another judge.

3. The appellant summarises his position in a skeleton argument dated 19 February 2021, (prepared by Mr Malik, of counsel, and adopted by Mr

Gajjar). The respondent's position is summarised in a skeleton argument (by Mr T Lindsay) dated 8 March 2021.

4. On 2 June 2021, evidence was heard from Mr Verney, expert witness for the appellant, and from the appellant.

5. The hearing was completed on 22 September 2021. I am obliged to both representatives for their clear and helpful submissions, having heard which, I reserved my decision.

6. *IM and Al* (Risks – membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 00188 (IAC), although its title refers to specific matters which do not relate to this appellant, is the starting point. The summary in the headnote is as follows:

    1. In order for a person to be at risk on return to Sudan there must be evidence known to the Sudanese authorities which implicates the claimant in activity which they are likely to perceive as a potential threat to the regime to the extent that, on return to Khartoum there is a risk to the claimant that he will be targeted by the authorities. The task of the decision maker is to identify such a person and this requires as comprehensive an assessment as possible about the individual concerned.
    2. The evidence draws a clear distinction between those who are arrested, detained for a short period, questioned, probably intimidated, possibly rough handled without having suffered (or being at risk of suffering) serious harm and those who face the much graver risk of serious harm. The distinction does not depend upon the individual being classified, for example, as a teacher or a journalist (relevant as these matters are) but is the result of a finely balanced fact-finding exercise encompassing all the information that can be gleaned about him. The decision maker is required to place the individual in the airport on return or back home in his community and assess how the authorities are likely to re-act on the strength of the information known to them about him.
    3. Distinctions must be drawn with those whose political activity is not particularly great or who do not have great influence. Whilst it does not take much for the NISS to open a file, the very fact that so many are identified as potential targets inevitably requires NISS to distinguish between those whom they view as a real threat and those whom they do not.
    4. It will not be enough to make out a risk that the authorities' interest will be limited to the extremely common phenomenon of arrest and detention which though intimidating (and designed to be intimidating) does not cross the threshold into persecution.
    5. The purpose of the targeting is likely to be obtaining information about the claimant's own activities or the activities of his friends and associates.
    6. The evidence establishes the targeting is not random but the result of suspicion based upon information in the authorities' possession, although it may be limited.
    7. Caution should be exercised when the claim is based on a single incident. Statistically, a single incident must reduce the likelihood of the Sudanese authorities becoming aware of it or treating the claimant as of significant interest.
    8. Where the claim is based on events in Sudan in which the claimant has come to the attention of the authorities, the nature of the claimant's involvement, the likelihood of this being perceived as in opposition to the government, his treatment in detention, the length of detention and any relevant surrounding circumstances and the likelihood of the event or the detention being made the subject of a record are all likely to be material factors.

9. Where the claim is based on events outside Sudan, the evidence of the claimant having come to the attention of Sudanese intelligence is bound to be more difficult to establish. However it is clear that the Sudanese authorities place reliance upon information-gathering about the activities of members of the diaspora which includes covert surveillance. The nature and extent of the claimant's activities, when and where, will inform the decision maker when he comes to decide whether it is likely those activities will attract the attention of the authorities, bearing in mind the likelihood that the authorities will have to distinguish amongst a potentially large group of individuals between those who merit being targeted and those that do not.

10. The decision maker must seek to build up as comprehensive a picture as possible of the claimant taking into account all relevant material including that which may not have been established even to the lower standard of proof.

11. Once a composite assessment of the evidence has been made, it will be for the decision maker to determine whether there is a real risk that the claimant will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention but meets the threshold of a real risk of serious harm.

12. Where a claimant has not been believed in all or part of his evidence, the decision maker will have to assess how this impacts on the requirement to establish that a Convention claim has been made out. He will not have the comprehensive, composite picture he would otherwise have had. There are likely to be shortfalls in the evidence that the decision maker is unable to speculate upon. The final analysis will remain the same: has the claimant established there is a real risk that he, the claimant, will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention and release but meets the threshold of serious harm.

7. There have been significant political developments since 2016. Further guidance is given in *KAM* (Nuba – return) Sudan CG [2020] UKUT 00269 (IAC). This case is also of more general relevance than the matter in the title:

(i) An individual of Nuba ethnicity is not at real risk of persecution or serious ill-treatment on return to Sudan (whether in the Nuba Mountains, Greater Khartoum or Khartoum International Airport) simply because of their ethnicity.

(ii) A returning failed asylum-seeker (including of Nuba ethnicity) is not at real risk of persecution or serious ill-treatment at the airport simply on account of being a failed asylum-seeker.

(iii) Prior to the political developments in 2019, individuals who were at risk on return (whether at the airport or in Greater Khartoum) were those who were perceived by the Sudanese authorities to be a sufficiently serious threat to the Sudanese Government to warrant targeting.

(iv) The assessment of that risk required an evaluation of what was likely to be known to the authorities and a holistic assessment of the individual's circumstances including any previous political activity in Sudan or abroad and any past history of detention in Sudan. Factors include whether the individual was a student, a political activist or a journalist; their ethnicity; their religion (in particular Christianity); and whether they came from a former conflict area (such as the Nuba Mountains).

(v) Whilst the question of perception of political opposition underlying (c) above remains the same since the 2019 political developments, when assessing any risk to an individual now, the effects of the 2019 political developments are relevant and are likely to affect the Sudanese authorities' view of, and attitude towards, those who might be perceived as political opponents. Further, the 2019 political developments are likely to have greatly reduced the interest of

the Sudanese government in supressing political opposition by violent or military action.

(vi) Internal relocation to Greater Khartoum for a person of Nuba ethnicity must depend upon an assessment of all the individual's circumstances including their living conditions, their ability to access education, healthcare and employment. Despite the impoverished conditions and discrimination faced by Nuba when living in the so-called 'Black Belt' area of Greater Khartoum, relocating there will not generally be unduly harsh or unreasonable.

8. The appellant's primary position is that he falls within the risk category in *IM and AI* headnote (1) as an opponent, or perceived opponent, of the regime (not as being of Beja or Nuba ethnicity, or as a member of an organised political group).

9. Earlier in these proceedings the appellant has argued in the alternative, based on the reports of Mr Verney, that the UT should depart from *IM and AI* as there are "very strong grounds supported by cogent evidence" for doing so. However, that position was stated only briefly in Mr Malik's skeleton argument and, although not abandoned, it was advanced only faintly by Mr Gajjar.

10. The respondent has referred to these passages in her *Country Policy and Information Note Sudan: Nuba - Version 1.0 December 2020,* at 2.4.3.1:

> The evidence submitted in *KAM* covered the period up to December 2019. The UT observed that - considering events in the round including the overthrow of former President al Bashir, the establishment of a transitional government including civilians, a new Constitution, and the prospect of peace with ongoing talks between the government and rebels (see paragraphs 170 to 174) - up to that point 'The direction of travel remains firmly pointing in the way of democratic change and the powers of law and order and a move to stability and resolving difficulties politically rather than through force or violence' (paragraph 175).
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> The situation during 2020 has broadly maintained this 'direction of travel' towards democracy and the rule of law. For example: the peace agreement with the rebel groups, appointment of civilian state governments, amendments to the penal code which have improved human rights, the removal of Sudan from the US' State Sponsor of Terror list which should allow access to international finance and trade. …
>
> Each case must be considered on its facts taking into account the risk factors identified by the UT in *KAM*.

11. The respondent's note is to be treated as a source of evidence and is not to be uncritically adopted for anything it says by way of policy. However, it does take the position a little further up to date than in *KAM*.

12. Mr Verney is thoroughly steeped in the history and politics of Sudan. He considers that its people have rejected and overthrown Islamic dictatorship in the past, only to find themselves again under the same rule. Recent changes are only cosmetic. The semi-hidden hand of the old regime holds power in the land. The apparent political progress will inevitably be reversed, as has happened over past decades, in accordance with his past predictions.

13. Mr Verney paints a grim picture. It is impossible to say that the long run of events may not prove him right. However, his opinion depends on an alternative interpretation and on disagreement with the guidance, not on different or later evidence.

14. The appellant has not referred to any evidence later than and materially different from the evidence which was before the UT when framing guidance. I decline to depart from that guidance.

15. While this decision does not turn on a continuing "direction of travel", the evidence is in line with the respondent's note, rather than with Mr Verney's more pessimistic view.

16. There was debate over whether the appellant embellished his account as his case went along; whether Mr Verney strayed beyond his expert role by encouraging him to do so; whether letters showing that he failed to obtain jobs are genuine documents; and whether failure to obtain a post at the level of his qualifications might have had an underlying political motive.

17. I find it unnecessary to resolve the minutiae of those debates because on applying current guidance to the applicant's case, at its realistic highest, the Sudanese authorities are not likely to see him as implicated in any activity involving a potential threat to the regime. There is no real risk of persecution.

18. As the appellant's case has been told and re-told to the respondent and to his representatives, it is hardly surprising that further details emerged. Whether or not Mr Verney tempted him to embroider during their interviews, he did not rise to the bait. As both representatives mentioned in their submissions, in oral evidence he repeatedly declined to elaborate on any matter. He struck me as a witness reluctant to embark on untruths. As indicated, above, however, the case does not turn on credibility.

19. Any political conversations in which the appellant took part at university were many years ago. Although the respondent argued that the evidence indicated that these took place in private, I accept that they were in open public spaces. He was not an activist of any prominence. Even if those conversations were broadly critical of the regime then in power, and even if they lay to any extent behind his later difficulties, as he suspected, there is nothing in that to provoke adverse interest from the current authorities.

20. The appellant had difficulties while running his market stall, including several brief detentions. At first he attributed those problems to being in competition with businesses run by the security forces, although later he tended to indicate a political element. Whether the places of detention were official police posts, and whether he should have known the difference, is neither here nor there. Again, there is nothing in this aspect of the case such that the appellant is likely now to be targeted as a threat to the present regime.

21. The respondent said that the job rejection letters may not be genuine documents, and that Mr Verney is not an expert in authentication. That is correct, but the respondent has identified no feature by which those letters might not be taken at face value.

22. As the respondent further submitted, there is nothing about the letters to suggest that they are written for any purpose other than to advise a candidate that he has been unsuccessful, or to show that there were underlying political motives. Equally, as Mr Gajjar said, that is exactly as might be expected. Political reasons for rejection were not likely to be stated.

23. The appellant gained high qualifications at a top university. He was frustrated for years by his failure to obtain a post matching those qualifications. The major impression given by his oral evidence was that he feels a genuine sense of injustice and that is why he is no longer in Sudan. I also have no doubt that political connections did play (and probably still play) a large part in the allocation of jobs there.

24. The appellant's failure to obtain a obtain a post at the level of his qualifications may well have been partly due to lack of the best connections, but I do not find the evidence persuasive that it was due to personal and political spite, rather than to the ordinary operation of the Sudanese job market.

25. Given the "direction of travel", it may well be that the appellant is less likely now to be discriminated if he were to seek a post in Sudan; but this decision is not based on enhancement of his prospects. If there was some indistinct aspect of political discrimination in the past, this did not reach the level of persecution, and is rather less likely to occur in the future.

26. The appellant produces evidence of attendance at a demonstration in Glasgow, in no prominent position. He has shown nothing in that which is likely to have led to him being identified by the present authorities, or to be of any adverse interest to them.

27. The evidence for the appellant does not establish that he falls within the ambit of the guidance to require protection.

28. The decision of the FtT has been set aside. The decision substituted is that the appeal, as originally brought to the FtT, is dismissed.

29. An anonymity direction is in place. There may be no need for that, but as the matter was not addressed, anonymity is maintained herein.

Hugh Macleman

1 October 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.