



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001764
FtT No: PA/52615/2020

THE IMMIGRATION ACTS

Decision & Reasons
Issued:
On 9th July 2023

Before
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

BS (SUDAN)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. V Jagadesham, Counsel, instructed by GMIAU
For the Respondent: Mr. A McVeety, Senior Presenting Officer

Heard at Manchester on 20 June 2023

ANONYMITY ORDER

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

Failure to comply with this Order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a national of Sudan. He appeals against the decision of the respondent not to grant him international protection.
2. His appeal was initially dismissed by a decision of the First-tier Tribunal dated 14 October 2021. He was granted permission to appeal to the Upper Tribunal, and by a decision of Upper Tribunal Judge Rintoul dated 23 May 2023, the decision of the First-tier Tribunal was set aside, with certain findings of fact preserved.
3. Mr. McVeety confirmed at the outset of the hearing that the respondent intended to grant the appellant leave to remain on humanitarian protection grounds.
4. I allowed the asylum and human rights appeals at the conclusion of the hearing and give my reasons below.

Anonymity Order

5. The First-tier Tribunal issued an Order granting the appellant anonymity on 14 October 2021, with attendant reasons. The Order was confirmed by UTJ Rintoul on 23 May 2023. No application was made by the parties to set aside the Order.
6. The Order is confirmed above.

Relevant Facts

7. The appellant is Nyimang, an ethnic sub-group of the Nuba, and is aged 40. He was born in South Kordofan, but moved to Khartoum with his family when he was young and resided in the capital until he left the country in 2015.
8. He was arrested by the Sudanese security forces in May 2015, and accused of being a member of Al Haraka Shabia, an anti-government organisation. He was detained for two months, during which time he was tortured. He was released on condition that he report daily to a

local police station, and act as an informant for the government. He reported for one week, and then left Sudan.

9. He arrived in the United Kingdom on 7 April 2016 and sought asylum on the same day. The respondent refused the claim by a decision dated 4 October 2016, and the appellant's appeal was dismissed by a decision of Judge of the First-tier Tribunal Ransley, dated 9 May 2017.
10. The appellant served further submissions on 2 September 2019, which were refused by the respondent without an attendant right of appeal. The appellant challenged this decision by judicial review, and the respondent subsequently agreed on 26 March 2020 to reconsider the application. By a decision dated 10 November 2020 the respondent considered the further submissions to amount to a fresh claim under paragraph 353 of the Immigration Rules but did not grant international protection.
11. Whilst in the United Kingdom the appellant has become politically involved with Nuba Mountains Solidarity Abroad (NSMA) and the Sudanese Peoples Liberation Movement North (SPLM-N).
12. He has attended several anti-Sudanese government demonstrations in the United Kingdom.

First-tier Tribunal Decision

13. UTJ Rintoul preserved the following findings of fact made by the First-tier Tribunal:
 - '35. Having considered all the evidence presented in the round with regards to the Appellant's ethnicity, I am prepared to accept it is reasonably likely that he is of Nubian ethnicity from the Ama Nyimang tribe as he claims. I consider that there is sufficient evidence before me to depart from the previous findings of Judge Ransley in this respect. This is because there is now cogent evidence to demonstrate that significant numbers of Nuba live in Greater Khartoum, face discrimination and harassment on account of their ethnicity, and have been subjected to arbitrary arrest and detention at the hands of the Sudanese authorities particularly during periods of heightened political tensions, as was the case when the Appellant claims to have been arrested. When the case was heard in 2017, Judge Ransley did not have the benefit of such evidence, including the country guidance in KAM and Mr Verney's expert report. The various letters provided

in support of the Appellant's case also go some way to establishing his ethnicity when considered cumulatively.

36. Further, I am also prepared to accept to the lower standard of proof that the Appellant was arbitrarily arrested, detained for two months and tortured in the manner he describes. This is because he has given a broadly consistent and detailed account of his experiences, which is to some extent supported by evidence from a medical professional, his claim accords with relevant country information and about what was happening at the time, and I found him to be a broadly credible witness in his oral evidence before me ...

...

39. With regards to the Appellant's Facebook activities, he explained in oral evidence that the name cited depicts his father's name, his grandfather's name and the family name in Nubian. Given his profile is not in his own name there is a question as to whether the Sudanese authorities would come across it even if they were minded to search for any Facebook activity. The posts of the Appellant at demonstrations do appear to be publicly available as they depict a globe symbol next to the date posted, which at least indicates the post was set to public view when the screenshot was printed. However, privacy settings can be changed at any time to make posts private or visible to just Facebook friends and I note that one of the posts included in the summary of activities (see consolidated appeal bundle, page 250) with the text '*Just fall that's all*', appears to be visible just to Facebook friends in contrast to a copy of the same post on page 244 of the bundle, which depicts a globe symbol. A further indication as to whether posts are public may be derived from the number of '*likes*' or '*comments*' received, particularly given the supposed intention to raise awareness of the issues and given the numbers involved at demonstrations. I consider that this gives rise to some doubt as to whether the Appellant's posts have in fact remained publicly available as claimed.

40. Whether or not his Facebook posts are publicly available, I accept that he has expressed genuine political opinions and that he has been involved with the NMSA and SPLM-N in the United Kingdom. This is because I found both the Appellant and [A] to be broadly credible witnesses, neither of whom sought to exaggerate the extent of the Appellant's involvement. The Appellant was able to explain his motivation for getting involved, having not previously been politically active in Sudan, and the circumstances that gave rise to him becoming a member. He

does not suggest that he is a high profile political activist and it seems to me that he attended the conference and got involved more as a means to show support and solidarity with people of his own ethnicity, perhaps also to feel part of a community, rather than a deep-seated political opinion as such. However, that does not make his involvement any less genuine and as such he cannot be expected to delete posts that relate to genuinely held opinions or beliefs to avoid persecution on return (see RT (Zimbabwe) [2010] EWCA Civ 1285 and HJ (Iran) [2010] EWCA Civ 172). I also find that it is at least reasonably likely that the Facebook posts adduced would be perceived as anti-regime if the Sudanese authorities came across them but there is no cogent evidence before me to suggest that the Appellant's profile or any of his *sur place* activities have in fact come to the attention of the authorities such that would give rise to risk on return. That said, his activities do present an additional risk factor on return if he is subject to investigation and those activities come to light.

41. Based on my findings of fact as set out above, that the Appellant is a broadly credible witness who was arrested, detained and ill-treated in Sudan and who has been involved to a limited extent in *sur place* political activities in the United Kingdom, I now turn to consider the question of risk on return.'

Evidence

14. By means of a supplementary bundle, filed and served prior to the hearing, the appellant relied upon:
 - 1) A supplementary witness statement, dated 9 June 2023
 - 2) A country report from Peter Verney, dated 7 June 2023
 - 3) A letter from Dr Omer Shurkian, SPLM-N Representative in the United Kingdom, dated 9 June 2023.
15. The appellant's supplementary witness statement is primarily directed towards his continuing engagement in anti-Sudanese Government activity in the United Kingdom, and his appointment to the Provisional Committee of the SPLM-N Chapter in the United Kingdom. This appointment is confirmed by Dr Shurkian.
16. Mr Verney, who has previously been acknowledged as an expert in Sudanese matters by the Upper Tribunal in *AAR & AA (Non-Arab*

Darfuris - return) Sudan [2019] UKUT 00282 (IAC), at [19], opined by means of his latest report, *inter alia*:

'75. [The appellant] continues to face severe risk if returned to Sudan, from the long-standing racism of the authorities towards the Nuba tribe, and from the repercussions of the government's conduct of war in southwestern Sudan.

...

77. The fact that he has broken the conditions of his release from security forces' detention will provide additional confirmation of these allegations and lead to rearrest. He would suffer from allegations of working with the armed political opposition and be at risk of harmful persecution on the basis of the racial hostility of the authorities.

...

80. The appellant was released from detention on condition of him becoming an informer for the security apparatus. I have explained that this is a commonly-reported security forces' procedure which keeps him under threat of rearrest and further harm for non-compliance.

81. It is my view that his detention and release on conditions is likely to have been recorded on the security forces' computer system, along with a record of his having broken these conditions.

82. It is my view that there is at least a real risk this would be discovered on his return.

83. The existence of an actual arrest warrant is not an essential requirement for him to be on the authorities' database.

84. I consider it likely that his detention and release on conditions, and failure to comply with those conditions, would have been recorded nonetheless.

...

88. The authorities' engagement with the current factional warfare in Sudan does not detract from their likely interest in someone such as the Appellant, who still matches the profile of their main longstanding enemies.

89. This has not been affected by the passage of time, in my opinion. If anything the extended unauthorised absence will be regarded as proof of his supposed guilt.

90. His political status has not changed substantially, and the Sudanese authorities are still looking out for people like him.

17. In respect of the appellant's *sur place* activities, Mr. Verney opined, *inter alia*:

107. In my previous report, I referred to the risk arising from the Appellant's political activities while in the UK.

...

111. The surveillance and infiltration I described [in a previous report] is consistent with what was said in Country Guidance IM and AI, which highlighted the regime's monitoring of those involved with opposition activities in the UK, including through the use of informers within the Sudanese community.

...

116. The authorities will no doubt be aware of his described activities with the SPLM-N in the UK, and this will be a further risk factor if he is interrogated by the security forces. Speculation on the political divisions in the SPLM-N and their likely impact is of no value. It will be sufficient in the eyes of the authorities that he is a long-standing active SPLM-N member.'

Decision

18. I note the country guidance decisions of *KAM (Nuba - return) Sudan CG* [2020] UKUT 269 (IAC) and *IM and AI (Risks - membership of the Beja Tribe, Beja Congress and JEM) Sudan CG* [2016] UKUT 188 (IAC), the latter establishing the need for a comprehensive and composite assessment of an individual's risk profile.

19. The headnote of the decision of *KAM*:

(a) 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.

- (b) 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.
- (c) 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.
- (d) 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).
- (e) 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 suppressing political opposition by violent or military action.
- (f) 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.

20. I observe certain paragraphs from Mr. Jagadesham's carefully prepared and very helpful skeleton argument:

- '4. In Mr. Verney's June 2023 report, he explains, "There is a combination of multiple factors which continue to place him at risk, namely his Nuba ethnicity, his accepted past experiences, and his activities with the SPLM-N (para 74), adding, that the [appellant] "continues to face severe risk if returned to Sudan,

from the longstanding racism of the authorities towards the Nuba tribe, and from the repercussions of the government's conduct of war in southwestern Sudan:" (para. 75). In relation to the [appellant's] risk on return:

4.1 Mr. Verney addresses the risk arising from the [appellant's] release on conditions and failure to comply with those conditions: see his June 2023 report, at para 1 onwards and see also 77 & 80 onwards, where he addresses the likelihood of a record having been made and this being discovered; see also paras 106 & 117 onwards in relation to likely investigations of this [appellant] (this is consistent with the earlier position noted in *KAM* - e.g., see [227], and see also Mr. Verney's 2021 report, paras 380-383). Mr. Verney also address the warrant issued for the [appellant], albeit this does not ultimately affect his assessment of risk (para. 97 onwards);

...

4.3 Mr. Verney addresses the continuing risk arising from the [appellant's] *sur place* activities: see his June 2023 report, para 107 onwards (referring to his 2021 report), concluding, "The authorities will no doubt be aware of his described activities with the SPLM-N in the UK, and this will be a further risk factor if he is interrogated by the security forces." As Mr. Verney notes, this is consistent with what was said in *IM and AI*, which highlighted the regime's monitoring of those involved with opposition activities in the UK, including through the use of informers within the Sudanese community, see [212]-[215] ...'

21. Mr. McVeety observed the decisions in *KAM* and *AM and AI*, noting the latter's guidance that there is 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 by the authorities but is the result of a finely balanced fact-finding exercise encompassing all the information that can be gleaned about the individual. A 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 react on the strength of the information known to them about him. Upon considering the preserved findings of fact, including that the appellant

had been tortured and his detention placed on record by the Sudanese authorities, Mr McVeety accepted on behalf of the respondent that the appellant fell into the second category, namely that he faces the much graver risk of serious harm upon return.

22. Whilst observing that the appellant had not been politically active in Sudan before his flight from the country, Mr. McVeety accepted that the question was one of perception, and the arrest, ill-treatment and requirement to both report and act as an informer established to the requisite standard that the Sudanese authorities perceive the appellant to have been politically active with an anti-government organisation whilst he resided in Khartoum. The respondent therefore accepted that the appellant has a political profile and for the reasons set out at paragraph 4.1 of the Mr. Jagadesham's skeleton argument possesses a well-founded fear of persecution at the hands of the Sudanese authorities.
23. Mr. McVeety also acknowledged the combination of the preserved findings as to the appellant's *sur place* political activity on behalf of SPLM-N and Mr. Verney's opinion in his latest report. Consequently, it was accepted that a real risk of persecution arises at the present time due to such activity in this country.
24. I note the respondent's concession as to humanitarian protection made at the outset of the hearing, based upon Khartoum airport presently being closed. The concession was properly made. However, for the reasons detailed above, it is proper that I additionally confirm that the appellant has established to the requisite standard that his protected rights under article 3 ECHR would be breached if he were to be returned to Sudan.

Notice of Decision

25. The decision of the First-tier Tribunal involved the making of a material error on a point of law and was set aside by a decision of the Upper Tribunal dated 23 May 2023
26. The decision is remade. The appellant's appeal is allowed on:
 - 1) Refugee Convention grounds
 - 2) Human Rights (article 3 ECHR) grounds.

27. An anonymity order is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2023