



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

Appeal Number: PA/01022/2019

THE IMMIGRATION ACTS

Heard at Bradford

**Decision and Reasons
Promulgated**

On 25 June 2019

On 27 June 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**KA
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Pickering, Counsel

For the respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original first Appellant in this determination identified as KA.

Introduction

1. I have anonymised the appellant's name because this decision refers to his international protection claim.

Background

2. In a decision sent on 25 March 2019, First-tier Tribunal ('FTT') Judge Moxon dismissed the appellant's appeal on asylum grounds, having made adverse credibility findings regarding the appellant's claimed political activities and having accepted that there was good reason to depart from the country guidance in AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC) ('the CG cases').
3. At the FTT hearing the respondent accepted that the appellant is a citizen of Sudan and a non-Arab Darfuri (member of the Berti tribe). It follows that if the CG cases were followed, the appellant would be entitled to refugee status. However at the beginning of the FTT hearing the respondent submitted that there was cogent country background evidence to support the proposition that the CG cases can be departed from i.e. there is now an internal relocation option to Khartoum, for non-Arab Darfuris. Again, at the beginning of the hearing, the respondent's representative submitted a Country Policy and Information Note - Sudan: Non-Arab Darfuri, dated September 2018 ('the CPIN').

Grounds of appeal

4. The appellant challenged the FTT's decision on three grounds:
 - (1) The FTT should have granted an adjournment for the appellant to address the submission, made for the first time at the hearing before the FTT, that the CPIN justifies a departure from the CG cases;
 - (2) There was insufficient cogent country background evidence to justify a departure from the CG cases;
 - (3) The FTT's factual finding that the appellant failed to provide evidence that Sudanese officials can be bribed to provide documents is inconsistent with the country background evidence before it.
5. In a decision dated 23 April 2019, FTT Judge Swaney granted the appellant permission to appeal to the Upper Tribunal ('UT') on all grounds.

6. The respondent has submitted a rule 24 notice dated 10 May 2019. This focuses upon the FTT's reasons for refusing an adjournment and contends that there was no unfairness.
7. The matter now comes before me to determine whether Judge Moxon's decision contains an error of law.

Hearing

8. At the beginning of the hearing Mrs Pettersen conceded that the FTT erred in law in reaching the findings it did and in particular grounds (1) and (2) were clearly made out. She placed no reliance on the rule 24 notice.
9. Both representatives agreed that the FTT decision contains errors of law for the reasons identified in the grounds of appeal and that it is appropriate for the decision to be re-made de novo in the FTT as extensive fact-finding may be necessary, dependent on the continued applicability of the CG cases. In any event, this is a case in which fairness demanded an adjournment of the FTT hearing. Having considered all the matters in the round and in the light of para 7.2 of the relevant *Senior President's Practice Statement*, I indicated that I agreed that this is an appropriate case to remit to the FTT.
10. Mrs Pettersen confirmed that the respondent did not resile from his concession before the FTT that the appellant is a member of the Berti tribe and the FTT should re-make the decision accordingly and in pursuant to all the relevant country evidence including any updated country guidance.

Error of law discussion

Ground 1 - adjournment

11. It is uncontroversial that the country guidance in a CG case remains in place until it is expressly superseded or replaced. The relevant country guidance in relation to Sudan was updated after a hearing in 2014. This has been followed by the respondent for many years. The decision letter in this case is dated 21 January 2019 and does not refer to the CG case at all. Significantly, it post-dates the September 2018 CPIN. Yet, the decision letter does not give the slightest hint that the CG cases on Sudan should not be followed because of the further information contained in the CPIN. The situation in Sudan has been evolving and fluid for many years. Given these circumstances, Mrs Pettersen has properly conceded that procedural fairness required the FTT to grant an adjournment in order to meet the respondent's submission (made for the first time at the hearing) that the CG cases on Sudan should not be followed. The decision letter in this case was drafted only six weeks before the FTT hearing. The

appellant and his representatives were entitled to assume that the respondent did not dispute that the CG cases remained appropriate, notwithstanding the changes described in the CPIN, when the respondent failed to make any reference to this within the decision letter itself.

12. As acknowledged by Mrs Pettersen, it matters not that the appellant has focussed upon his political activities and not his tribal origin. If the appellant is at risk of persecution for reasons relating to his tribal origin, then the country guidance must be applied.

Ground 2 - CG

13. Given the conclusions I have reached on ground 1, there is no need for me to address ground 3.

Ground 3 - credibility

14. Mrs Pettersen was also correct to concede that the FTT erred in law in finding at [35(b)] that there was no country evidence to support the appellant's claim that he was able to obtain documents with bribery. There is extensive country evidence to support endemic official corruption in Sudan. Although this constituted one reason for the FTT's adverse credibility findings, the FTT regarded it to be sufficient to significantly undermine the appellant's credibility. This finding therefore infects the remainder of the credibility findings.

Decision

15. The FTT's decision contains an error of law and is set aside.
16. The decision is remitted to the FTT where it shall be remade by a FTT Judge other than Judge Moxon.

Signed: *UTJ Plimmer*
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
25 June 2019