



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/03950/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford Phoenix House  
On 6<sup>th</sup> March 2019**

**Decision & Reasons Promulgated  
On 16<sup>th</sup> April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**M H M T**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hussain (Counsel)  
For the Respondent: Ms R Petersen (Senior HOPO)

**DECISION AND REASONS**

1. This was an appeal against the determination of First-tier Tribunal Brookfield, promulgated on 2<sup>nd</sup> May 2018, following a hearing at Manchester on 23<sup>rd</sup> April 2018. In the determination, 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 1<sup>st</sup> January 1989. He appeals against the decision of the Respondent.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he is a 29 year old national of Sudan and is a member of the Bargo tribe. He was arrested in Khartoum on 3<sup>rd</sup> May 2015 and was detained until 24<sup>th</sup> May 2015. This was because he had been transporting goods in a vehicle. He was accused of supporting the Justice and Equality Movement (the JEM). He faced physical abuse upon being detained. His release was conditional on him not leaving the country. He had to report to the Sudanese authorities regularly. The Appellant used to take goods from Khartoum to Darfur. He would be informed what was needed in Darfur. He would collect money from shopkeepers he knew in Khartoum. He purchased the needed items with these funds. He then took them to Darfur in his vehicle. On 12<sup>th</sup> June 2015, when he was collecting the money, the government made the shopkeepers close their shops and as a result, they went to a demonstration to protest at their businesses being closed. The Appellant decided to accompany his shopkeeper friends to their demonstration. He was arrested. He was then detained until 25<sup>th</sup> July 2015 and accused of supporting JEM and tortured and ill-treated during his detention. He now claims that he is unable to return to Sudan as he is a non-Arab Darfuri and would face persecution on account of his ethnicity and imputed political opinion.

### **The Judge's Findings**

4. The judge had regard to the existing country guidance cases, given that it was accepted that the Appellant was a member of a non-Arab Darfuri tribe (see paragraph 10(x)). The cases referred to are **AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056** which concluded that all non-Arab Darfuri returnees would be at risk on return to Sudan and that they could not relocate in Khartoum. Another case that was considered was **MM (Darfuris) Sudan CG [2015] UKUT 10**, where it was held that in the country guidance case of **AA**, where it had been stated that if the claimant from Sudan is a non-Arab Darfuri, he must succeed in an international protection claim, the term "Darfuri", is to be understood as an ethnic term relating to origins, and not to geographical background. As the judge observed, "accordingly it covers even Darfuris who were not born in Darfur such as this Appellant" (see paragraph 10(xi)).
5. However, the judge went on to then observe that since these cases were decided, "there has been a report issued in August 2016 by the UK and Danish authorities which is at page 49 onwards of the Appellant's bundle" and that "this advises that a number of sources have stated that there is no information to indicate that failed asylum seekers or returnees from Darfur would generally experience difficulties on return to Khartoum International Airport..." (see paragraph 10(xii)). Towards the end of her consideration, the judge also had regard to the country guidance case of **IM and EI (Risks - membership of Beja tribe) CG [2016] UKUT 00188**, which was to the effect that 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 (see paragraph 10(xx)). In the light of these considerations, the judge went on to dismiss the appeal on the basis that “the Appellant has not provided any background information which disputes the information contained in the August 2016 report of the UK and Danish authorities or the information in the 2017 Country Policy and Information Note on Sudan”, given that “these reports indicate there has been a durable change in Sudan” (see paragraph 10(xxii)). The appeal was dismissed.

### **Grounds of Application**

6. The grounds of application state that the judge erred in law in failing to apply the country guidance case of **AA [2009] UKAIT 00058** and **MM (Darfuris) Sudan CG [2015] UKUT 10**, having found that the Appellant belonged to the Bargo tribe (see paragraph 10(x)).
7. Permission to appeal was granted on 24<sup>th</sup> May 2018 on the basis that the judge had failed to follow the Upper Tribunal Guidance Note of 2011 No.2.
8. On 13<sup>th</sup> August 2018 Deputy Upper Tribunal Judge Davey undertook a first stage hearing, the decision of which was promulgated on 10<sup>th</sup> September 2018, in the Upper Tribunal. The Upper Tribunal held that the judge’s analysis appears to be wanting on the issue of durability of change in the absence of real risk so as to engage the Refugee Convention were the Appellant to return as a person of Bargo ethnicity to Sudan (see paragraph 8).

### **Submissions**

9. At the hearing before me on 6<sup>th</sup> March 2019, Mr Hussain argued that the background evidence concerning the risk to non-Darfuris remains. He submitted that the entire purpose of country guidance cases is that, until such time as they are changed, they stand to be followed, unless the factual circumstances suggest otherwise. In his case, background evidence had been provided, showing an existence of risk to the Appellant, irrespective of any adverse credibility finding in the claim, and the country guidance cases properly fell to be applied. Ms Petersen submitted that she would have nothing further to add to that submission because existing country guidance cases indicated which way this Tribunal should go. The Secretary of State had not produced evidence today that impelled the Tribunal to take a different view.

### **Error of Law**

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that it falls to be set aside (see Section 12(1) of TCEA 2007). My reasons are as follows.

11. First, this was a case where that the Appellant's evidence was that he had been arrested twice. He had been accused of working for JEM. He had been released after arrest. The judge had held that this claim was not credible. It could not be said that the Appellant was at graver risk of serious harm. The Appellant had not been involved in any active regime political activities. He would therefore not be perceived as having any great influence. Since the Appellant claims that he was not involved with the JEM, it is reasonably unlikely he would be targeted on his return to Sudan (see paragraph 10(xxi)). However, there has been nothing before me to suggest that the Tribunal's country guidance case was not valid at the time. The cases of **AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056** and the case of **MM (Darfuris) Sudan CG [2015] UKUT 10** apply. It is open to the Tribunal below to depart from existing country guidance cases but only if there is evidence that "circumstances have changed" or that "substantial new evidence which warrants a re-examination of the position" has been presented. This was not the case here.
12. Second, it must therefore then follow that the settled position regarding the status of the country guidance cases means that if such a decision is not followed then there will be a material error of law unless "very strong grounds supported by cogent evidence" are adduced. This is clear from Practice Direction 12.4 which suggests that
- "Because of the principle that like cases should be treated in a like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for review or appeal on a point of law".
13. In the instant case, the judge set out the country guidance cases (at paragraph 10(xi)) and then in the next breath went on to consider the August 2016 guidance issued by the UK and the Danish authorities (at page 49 onwards of the Appellant's bundle), but the number of country guidance cases, which are followed one after the other, still remain and the Court of Appeal's stricture in **SG (Iraq) [2012] EWCA Civ 940**, which emphasises the process to which country guidance cases emerge, must be followed.
14. These cases show that the Appellant's membership of a non-Darfuri tribe, which is accepted by the Secretary of State, exposes him to a risk of ill-treatment and persecution. I therefore proceed to remake the decision. I have given consideration to the evidence before the original judge, her decision, and the submissions that I have heard today. For the reasons that I have already given, this appeal is allowed.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the original judge. I remake the decision. This appeal is allowed.

An anonymity direction is made.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed

Dated

Deputy Upper Tribunal Judge Juss

15<sup>th</sup> April 2019

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed

Dated

Deputy Upper Tribunal Judge Juss

15<sup>th</sup> April 2019