

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

**Heard at Field House (AIT Procession House)
On 4 November 2009**

Before

**SENIOR IMMIGRATION JUDGE ALLEN
SENIOR IMMIGRATION JUDGE LANE**

Between

AA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S McEwen, Legal Representative, Refugee and Migrant
Justice

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

All non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062 is no longer to be followed, save in respect of the guidance summarised at (2) and (6) of the headnote to that case.

1. The appellant is a citizen of Sudan. He appealed to an Immigration Judge against the Secretary of State's decision on 8 September 2008 to remove him as an illegal entrant from the United Kingdom.
2. Little more need be said about the Immigration Judge's determination, given that it was successfully challenged and on 16 March 2009 a Senior Immigration Judge ordered a full second stage reconsideration hearing. A copy of that determination is annexed hereto.
3. The second stage reconsideration took place before us on 4 November 2009. Ms S McEwen of Refugee and Migrant Justice appeared on behalf of the appellant. Mr E Tufan appeared on behalf of the Secretary of State.
4. It was common ground that the appeal fell to be allowed. The UK Border Agency produced an Operational Guidance Note (OGN) on Sudan on 2 November 2009. At paragraph 3.8.9 we find the following:

“3.8.9 Ordinary non-Arab Darfuris are not thought to be subject to systematic persecution outside Darfur and the courts have found that it is not unduly harsh to expect them to internally relocate to Khartoum. However, those decisions predated the developments and reports referred to at paragraph 3.9.4 to 3.9.7 below, and restrictions on the operations of NGOs – a key source of country of origin information on Sudan – have meant that we have been unable to obtain sufficient reliable information to be able to assess accurately whether there is a continued heightened risk to non-Arab Darfuris in Khartoum. In light of the fact that we do not yet have sufficient information to allay the concerns raised in the reports, case owners should not argue that non-Arab Darfuris can relocate internally within Sudan.

3.8.10 **Conclusion.** All non-Arab Darfuris, regardless of their political or other affiliations, are at real risk of persecution in Darfur and internal relocation elsewhere in Sudan is not currently to be relied upon. Claimants who establish that they are non-Arab Darfuris and who do not fall within the exclusion clauses will therefore qualify for asylum.”

5. Paragraphs 3.9.4 to 3.9.7 of the OGN summarise recent evidence on the situation in Khartoum. On 10 May 2008 JEM launched an assault on Omdurman, Khartoum as a consequence of which there were reports of arbitrary arrests by the Sudanese authorities, extrajudicial executions and ill-treatment of detainees following the attack. The Foreign and Commonwealth Office stated that following the fighting large number of non-Arab Darfuris living in Khartoum were detained. On 4 March 2009 the ICC announced the issue of an arrest warrant against President Bashir for war crimes and crimes against humanity in Darfur. This led to the expulsion of a number of international NGOs and the closure of some local human rights organisations, which severely reduced the ability of the local human rights community to monitor and report on human rights violations. There was continued press censorship and intimidation which further increased restrictions on the freedom of expression. A UNHCR report of November 2008 refers to the use by the National Intelligence and Security Services (NISS) of arbitrary arrest against political dissidents in Khartoum

which can involve ill-treatment, torture and unofficial places of detention, and it is said that Darfurians may raise the suspicion of the security forces by the mere fact of travelling from other parts of Sudan to Darfur, by having travelled abroad, or having been in contact with individuals and organisations abroad.

6. Thus it is clear that the appellant, if he is a non-Arab Darfuri, must succeed in his appeal. His evidence has consistently been that he is of the Masseleit tribe, and Mr Tufan accepted that that had not been contested. He referred to paragraphs 16 and 22 of the refusal letter as raising some sort of challenge, but the former does no more than find that the appellant did not have an individual threat of persecution directed against him, and the latter refers to him remaining in Sudan for a further three years after the attack on his village. We consider that these matters come nowhere near a challenge to his claimed tribal affiliation, which is noted without comment at paragraph 7A of the refusal letter. Accordingly we accept that the appellant is a non-Arab Darfuri, and it is not suggested that he falls within the exclusion clauses.
7. As a consequence of the further evidence referred to in the OGN reassessment, it is clear that persons who are non-Arabs from Darfur facing relocation to Khartoum are now a risk category. It follows from this that the guidance summarised in paragraphs (3), (4), (5) and (7) in the head note to HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062 is no longer to be followed.
8. However, as regards other aspects of the guidance given in HGMO, nothing in the recent evidence or the OGN indicates any reason to depart from the guidance summarised in paragraphs (2) and (6) in the head note to HGMO. These state as follows:
 - “(2) Neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) are as such at real risk on return to Khartoum
 - (6) An appellant will be able to succeed on the basis of medical needs only in extreme and exceptional circumstances.”

This appeal is allowed under the Refugee Convention and under Article 3 of the Human Rights Convention.

Signed

Senior Immigration Judge Allen