ASYLUM AND IMMIGRATION TRIBUNAL

AE (Relocation-Darfur-Khartoum an option) Sudan CG [2005] UKAIT 00101

THE IMMIGRATION ACTS

Heard at	Field House	Determination Promulgated
On	19th April 2005	3rd May 2005

Before

Mr Hon. Mr Justice Hodge (President)
Miss E R Arfon-Jones (Deputy President)

Between

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant	Ms L Saunders, Counsel
For the Respondent	Ms L Hooper, Counsel

Internal relocation in the Khartoum area is an option for those fleeing from Darfur. The available evidence does not show that on any such relocation every Darfurian faces a real risk of persecution or ill treatment contrary to article 3

DETERMINATION AND REASONS

1. The appellant is a citizen of the Sudan. He was born on the 5th October 1985 so is now 19. He claimed asylum in the United Kingdom on his arrival on 24th June 2003. That claim was refused but he was granted exceptional leave to remain. His application for further leave led to a refusal to vary leave to enter or remain by the respondent on 19th April 2004. The appellant appealed and his appeal was heard by Mr F Pieri, Adjudicator, in Glasgow.

2. The adjudicator found the appellant credible. He accepted that the appellant is a member of the Massaleit tribe from the Darfur area of Sudan. In his determination promulgated on the 6th August 2004 the adjudicator concluded:-

> "It seems to me clear when this appellant's past experiences are placed in context of the current background material that there is a real risk of the appellant suffering ill-treatment amounting to persecution and a breach of Article 3 in the Darfur area now. Members of his close family have suffered terribly in the past. The situation in the Darfur area is still dire. The ill-treatment he risks suffering is on account of his race and so falls within the terms of the Refugee Convention."

3. The adjudicator having concluded that the claimant had a well-founded fear of persecution in the Darfur area of Sudan went on to consider the question of internal relocation. He concluded at paragraph 42 "Internal relocation has no part to play in the circumstances of this appeal". It is against that decision that the Secretary of State applied for permission to appeal to the Immigration Appeal Tribunal.

4. That application was considered by Mr P R Lane (Vice President). He granted permission to appeal and concluded that the determination of the adjudicator contains arguably a mistake in law in the application by the adjudicator of the concept of internal relocation within the context of the Refugee Convention.

5. By Article 5 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (Commencement no. 5 and Transitional Provisions) Order 2005 (SI 2005/230), any appeal which immediately before the commencement of the 2004 Act is pending before the Immigration Appeal Tribunal shall, after commencement of that Act, be dealt with by the Asylum and Immigration Tribunal as if it had originally decided the appeal and it was reconsidering its decision.

6. As this is an appeal before the Asylum and Immigration Tribunal we will refer to the claimant as the appellant and the Secretary of State as the respondent notwithstanding the fact that the application for permission to appeal was made by the Secretary of State. In accordance with paragraph 14.8 of the Practice Directions of the President of the AIT issued on 4th April 2005, we must consider whether the adjudicator made a material error in law.

Material Error of Law

7. We first considered whether the determination in this case contained a material error of law. The Adjudicator dealt with the issue of internal relocation and made his findings as follows:-

> *"38. That leaves the question of internal relocation. Mrs Ahmed submitted that the background material shows that the*

Massaleit do not suffer at the hands of the authorities out with the Darfur area. I agree. The background material shows that there are many displaced people from Darfur living elsewhere in Sudan. This however appears to me to raise a difficult issue. I shall explain.

39. Underlying the whole question of refugee status is surrogate protection. In the normal course a person living in an area of a country where he is at risk of persecution at the hands of non state agents who act with impunity in that area can be expected to relocate to another safe area of the country still controlled by the government, if such an area exists, as the government will protect him in that other area. That provides the paradigm example of internal relocation. The situation however in Darfur appears to me to be far removed from this.

40. In Darfur Arab militias are attacking black Africans such as the Massaleit. These Arab militias were the source of the ill-treatment endured by the Appellant's family. What distinguishes this from the typical example I set out earlier is that there appears to me on the background evidence, at the very least, a real risk that these Arab militias are acting with the support and the complicity of the Sudanese Government. In these circumstances does internal relocation to another area of Sudan have any part to play? The answer to this, in my view, can be found be examining the persecution which this appellant risks facing. It is more than a risk of persecution by Arab militias. It is a risk of persecution by Arab militias acting with the support of the government.

41. I return to the United Nations News document of 23rd June 2004. That states that a UN Human Rights Report has found many human rights violations in the Darfur area including ethnic displacement. The United Nations News Bulletin of 2nd April 2004 talks of forced depopulation of entire areas. On the whole evidence there appears to me to be a real risk that forced depopulation is one of the aims of the Arab militias. As I have said there also appears to me at the very least a real risk that the Arab militias are acting with the support and complicity of the Sudanese government. There appears to me to be something fundamentally flawed in the suggestion that in such circumstances the Appellant should be expected to relocate to Khartoum or some other area in Sudan rather than seeking surrogate protection of the international community. By moving to another area of Sudan he could not be said to be obtaining the protection of the government against the persecution sponsored by the same government in Darfur. At best, it seems to me, all that could be said is that the Appellant would have moved to an area where his persecutors have no interest in him and would have gone along with one of

his persecutors' objectives namely that he and his kind be displaced from the area where he once lived. To go along with the wishes of his persecutors may result in his being safe but it is far removed from his obtaining protection from his persecutors. I find support for these conclusions in the Michigan Guidelines on the internal protection alternative and Macdonald, Immigration Law Practice paragraph 12.43.

42. In my view therefore internal relocation has no part to play in the circumstances of this appeal."

Submissions on Error of Law

8. The Secretary of State argued that the adjudicator made a legal mistake in the manner in which he considered internal relocation. It is said he failed to consider the argument raised with him that the appellant will not have any need for protection if he is relocated to a different area. Even if it were accepted that the State was complicit in the events of Darfur that does not rule out the possibility that a safe haven cannot be found elsewhere in Sudan. He is further said to have erred in finding that the appellant by moving to another area in Sudan would not be availing himself of the protection of the State. It was also suggested that there was no objective evidence that indicates the problems in Darfur extend out with the Darfur area. Indeed there is no real risk of persecution says the Secretary of State for the appellant if he were to relocate.

9. Counsel for the appellant described the activities of the militias in Darfur supported by the Sudanese government as ethnic cleansing and forcible displacement. It was said this continues in any place of relocation. The adjudicator adopted the right approach. The persecution in Darfur is government sponsored. Reliance was placed on paragraph 31 of the UNHCR Guidelines on International Protection ... "Internal Flight or Relocation (UNHCR 23rd July 2003)". At paragraph 31 it is said "Where internal displacement is a result of ""ethnic cleansing"" policies, denying refugee status on the basis of the internal flight or relocation concept could be interpreted as condoning the resulting situation on the ground and therefore raised additional concerns".

Conclusions on Error Law

10. We are satisfied that the adjudicator made a material error of law in his conclusion on the issues of internal relocation. The appellant was held to be a Massaleit. The adjudicator concluded members of that tribe do not suffer at the hands of the authorities outwith the Darfur area and that there are many displaced people from Darfur living elsewhere in Sudan. The internal relocation alternative would, the Adjudicator concluded, have meant the claimant moving to an area where his persecutors have no interest in him. But he would be displaced from

the area where he had once lived. That it was said "...may result in his being safe but it is far removed from his obtaining protection from his persecutors".

11. The proper start-point for any consideration of the question of internal relocation is set out in paragraph 91 of the 1979 UNHCR Handbook as follows:-

> "Relocation Within County of Origin.
>
> Where it appears that the persecution is clearly confined to a specific part of the country's territory, it may be necessary in order to check that the condition laid down in Article 1 a of the Geneva Convention has been fulfilled, namely that the person concerned is ""is unable or owing to such fear (of persecution), is unwilling to avail himself of the protection of that country,"" to ascertain whether the person concerned cannot find effective protection in another part of his own country, to which he may reasonably be expected to move".

This issue has been considered jurisprudentially on many occasions in many jurisdictions. The leading UK cases are *R v Secretary of State for the Home Department ex parte Robinson [1998] QB929* as reconsidered and further interpreted in the light of the Human Rights Act 1998 in *AE and FE v Secretary of State for the Home Department [2003] INLR 475. CA.*

12. At paragraph 67 of AE and FE the Master of the Rolls concluded in relation to the right to refugee status under the Refugee Convention that: "consideration of the reasonableness of internal relocation should focus on the consequences to the asylum seeker settling in the place of relocation instead of his previous home". This as was said at paragraph 24 "involves a comparison between the conditions prevailing in the place of habitual residence and those which prevail in the safe haven, having regard to the impact that they will have on a person with the characteristics of the asylum seeker".

13. This is not the approach taken by the adjudicator in this case. He appears to have accepted that the claimant would not suffer at the hands of the authorities out with the Darfur area and his persecutors would have no interest in him and he may indeed be safe away from Darfur. Nevertheless he allowed the appeal. That he did so indicates a misconception of the internal relocation test. On this logic, there is a further requirement in order to be able to show that internal relocation is not available. It is not sufficient despite the person moving being safe in the area to which he moves. His move must also not accord with the wishes of his persecutors. But the wishes of one's persecutors will only matter in this context if as a matter of fact they adversely impact on the situation in which a person finds himself: see para. 24 *AE and FE* (above).

14. The background material quoted by the adjudicator suggests complicity by the government of Sudan in a campaign of ethnic cleansing in the Darfur region. There is nothing in UK law to support the assertion in paragraph 31 of the UNHCR Guidelines on International Protection quoted (see para. 9 above) that if there has been a policy of "ethnic cleansing" acceptance of the viability of internal relocation condones that policy or could be interpreted as condoning that policy. We do not accept it is legitimate to claim that governmental or governmental supported action amounting to persecution directed against an individual or group because of their ethnicity leading to their being displaced to another area in their country must lead to an entitlement to international protection as refugees even if, in the area to which they are displaced, there is no real risk of there being persecuted.

15. When considering internal relocation the adjudicator erred in law by failing to focus on the consequences to the appellant of settling in the place of relocation instead of his previous home. He should have considered the background information on the proposed place of internal relocation having regard to the impact that that will have on a person with the characteristics of the appellant. In general terms if there is a safe haven within his own country for a person who has been persecuted in another part of that country even with the complicity of the government then the international community can expect a claimant to go there. Many hundreds of thousands of people appear to have been displaced from Darfur as a result of the activities of the militias widely condemned by the international community as ethnic cleansing. If as a matter of fact they are safe elsewhere in Sudan it cannot be the responsibility of the international community to give them refuge merely because of the abhorrent nature of the policy which has driven them from their homes. We speak here of the position generally. Of course, in any individual case there may be specific circumstances which would still cause relocation to be unduly harsh, but none were identified by the adjudicator in this case.

16. We, therefore, concluded that the adjudicator had made a material error of law. We heard submissions on whether to proceed to hear and determine the case or to adjourn it for the gathering of further or other evidence. We noted the claimant had filed further and fresh evidence dealing with the background position in Sudan. An expert's report from a Mr F H Verney had been filed and the witness had attended at the hearing. We concluded we should consider the evidence provided and hear from the witness and reconsider the decision in this appeal.

Internal Relocation in Sudan: IAT Decisions

17. The adjudicator found that this claimant would be at risk of persecution were he to return to his home area in Darfur. It is the Secretary of State's case that there is no objective evidence that indicates the problems in Darfur extend out with the Darfur area and there is no real risk to Darfur Africans returning to Khartoum. The IAT

has considered the issue of internal relocation to Khartoum in a number of recently reported cases.

18. In *AA (Kreish Ethnicity, Decree 4/307 (Sudan) [2004] UK IAT00167* the Tribunal considered the background evidence about the internal displacement camps in Khartoum. At paragraph 23 they said as follows:-

> "We feel nonetheless that the claimant could be returned without being at risk of Article 3 harm even if it meant he would have to be placed in an internal displacement camp in Khartoum. Approximately 1.8 million internally displaced persons are living around Khartoum and the Norwegian Report makes it plain their conditions are difficult. What the Report also makes plain, however, if that their conditions cannot be said to be inhumane or degrading. Employment is scarce and there is much poverty but there are health facilities and water facilities for those who live in camps and for approximately 70% of the IDPs in Khartoum there is access to some form of medical service".

The Tribunal relied on a Norwegian Refugee Council's profile of Internal Displacement on Sudan dated 19th May 2004 which as the Tribunal pointed out "...contains a very large amount of material relating to the position of displaced persons in Sudan gathered over the last two or three years."

19. In *AB (Return of Southern Sudanese) Sudan CG 20 [2004] UK IAT 00260* a determination promulgated on the 17th September 2004 the Tribunal quoted a letter from the UNHCR of the 1st July 2002 relating to the potential placement of southern Sudanese in camps in Khartoum. UNHCR said as follows:-

> "Such persons may be placed in camps for the internally displaced and would likely be compelled to contend with harsh living conditions and physical insecurity".

20. In commenting on this letter the Tribunal said at paragraph 33:

> "There is no evidence to show that (the claimant) would be at real risk of finding himself in a camp for displaced persons. Even if he did, the UNHCR letter contains no assertion that conditions in a camp for the internally displaced, albeit involving harsh living conditions and physical insecurity, would be such as to cross the high threshold applied for Article 3".

21. Again in *MM (Zaghawa – risk on return – internal flight) Sudan 2005 UK IAT 00069,* a decision published on the 9th March 2005, the Tribunal again considers this issue. The claimant in *AA* was of Kreish ethnicity and the claimant in *AB* was from southern Sudan. The claimant in *MM* was not of the same ethnicity as the appellant in this

case but was from Darfur. The Tribunal therefore addressed the issue of whether the appellant in *MM* could safely relocate within the Sudan and whether it would be unduly harsh for him to do so and considered any risk the appellant might face in Khartoum where he would be returned to.

22. The Tribunal in *MM* relied on a UNHCR letter of the 18th May 2004 concerning "return of failed asylum seekers to Sudan". Quoting UNHCR at paragraph 35 the Tribunal said:

> "Internally displaced persons from Darfur also often face protection risks, including forced relocation, forced return. We do not find that the heightened risk of scrutiny is enough to amount to persecution in breach of Article 3 of the ECHR. The appellant was not a student. We note that the UNHCR cited only one example of the authorities moving into a camp to evict residents and forcibly relocating them to the outskirts of Khartoum. This one example does not show that evictions are being systematically carried out on all the camps and does not make it a real risk".

23. Again referring to the UNHCR letter of the 18th May 2004 the Tribunal said at paragraph 37:

> "The UNHCR describes the conditions as precarious. This limited information is insufficient to lead to a finding that the conditions in the camp amount to a breach of Article 3 or that the displaced persons in those camps are persecuted by reason of their ethnicity by the authorities who run the camps."

24. In *MM* the Tribunal heard evidence from Peter Verney, the witness in this case. They said in response to his evidence," We do not find that this evidence paints a picture of systematic human rights abuses of displaced Darfurians in Khartoum".

25. The appellant also maintains that there is a real risk that on any return to Khartoum he will be detained by the internal security services and presumably ill-treated. This issue was also addressed in the three cases cited. In *AA* at paragraph 16 the Tribunal said:

> "We find it entirely plausible that someone who has been away from Sudan for a long time will be questioned and may be required to make tax payments in foreign currency but that could not amount to persecution and we see no reason to suppose that this would place a person at the risk of Article 3 harm.

At paragraph 17, it added:

> "We are further not aware of any information that shows that the Sudanese authorities in Khartoum are treating returning

southerners in such a way as to put them at real risk of Article 3 harm".

26. In *AB* the Tribunal had received no evidence to cast doubt upon the earlier Tribunals findings at *AA* and concluded:

> "There is no evidence to show that at the present time being a person who originates from southern Sudan is such as to put him or her at real risk on return to Khartoum."

27. The Tribunal in *MM* having considered the background information concluded at para. 44:-

> (i) We accept the appellant is likely to be questioned at the airport on his return to Sudan in view of his ethnic and linguistic characteristics.
>
> (ii) The objective information does not lead us to find that he is likely to be at risk of persecution or ill-treatment which reaches to the threshold of Article 3 as the result of the questioning."

The Background Information

28. The CIPU Reports of April 2004 available to the adjudicator and that of October 2004 shown to us do not cite any evidence which calls into question the conclusions of the three cases cited above. We note that the claimants in those cases came variously from Southern Sudan and Darfur and were not of this appellant's ethnicity as found by the adjudicator. But the general conclusion from the cases is that there is no real risk of persecution or treatment contrary to Article 3 for those relocated from areas of Sudan to Khartoum.

29. The Global IDP Project, a group established by the Norwegian Refugee Council in 1996 produced a report on the 24th March 2005 entitled "Sudan: Darfur Crisis adds to challenge of mass return to the South following historic peace deal". Under a heading entitled "Challenges of Return" the Report says of internally displaced persons currently living in Khartoum "... the capital hosts nearly 2 million IDPs, most of whom appear to be willing to go back to their places of origin ... a survey found that three quarters of IDPs in Khartoum were unemployed, 44% having received no formal education. Over half of them were under 20 years old".

30. It further said:

> "Despite an encouraging government initiative to grant land to IIDPs in Khartoum the actual way this process has been carried out has raised serious concerns about the government's commitment to the project as thousands of displaced families have been left homeless. Out of some 2 million IDPs in greater

> Khartoum the vast majority are living in squatter areas and about 270,000 are settled in four overcrowded camps ... By November 2004 80% of the IDPs were living in improvised shelters and many were forced to return to the south as a consequence of the demolitions."

31. A significant amount of the material submitted to us related to the position of internally displaced persons in Darfur. The adjudicator's factual finding that this appellant was at a real risk of persecution in Darfur has not been challenged. The issue here is, can there be internal relocation to Khartoum for the appellant. Much of the background information provided to us on this issue is very generalised. We were for instance provided with extracts from an Amnesty International paper dated 4th April 2005 entitled "Risks of Refoulement for Sudan's refugees". Its discussion of the security situation in Khartoum is somewhat contradictory. It asserts for instance "there is no internal flight alternative for Darfurians in Khartoum/Central Sudan". It says "Darfurians from African ethnic groups such as ... Massaleit ... are a high risk group to arrests and human rights violations". On the other hand it says:

> "..arrests have been carried out mostly of suspected supporters of opposition groups including Darfuris from African ethnic groups accused of sympathising with the armed groups".

Further it refers to the existence of ghost houses and the fact that those who are detained there "are mainly political opposition party members or supporters".

Further it says:

> "It is difficult to keep track of people returned of people returned to Sudan and we do not have reports of persons returning/deported to Sudan being arrested. Over the last couple of year's high profile politically active individuals have travelled to the centre without any particularly significant instances being reported. However, this is not a guarantee of safety for others."

32. Mr Peter Verney, who gave evidence, said he had last been in Sudan in 1998. He described himself as being persona non grata in Sudan having received death threats from the Sudanese government. He cannot return to Sudan as he cannot protect his friends and relatives there. He was married to a Sudanese citizen. His evidence was that he had had long exposure to Sudanese society and is in daily contact with Sudanese.

33. He regarded internally displaced persons as being given very minimal provision. He accepted there was several hundreds of thousands of internally displaced persons in Khartoum. He thought that the appellant might be identified by informer systems that operated in

camps. He said that there were reports of arrests and detention of students, lawyers, merchants and traders but accepted that the appellant did not fit into any of these categories. He asserted that anybody from the appellant's ethnic background would have loyalty to the rebels imputed to them. The witnesses overall approach was that in effect the appellant would be at a relatively high risk of persecution "like others from African ethnic groups who are perceived to sympathise with rebel groups".

34. The adjudicator accepted this appellant as a Massaleit from Darfur who had a real risk of persecution in that area of Sudan because of his ethnicity.

35. There is no evidence in the background papers to support a suggestion that Massaleit from Darfur, or indeed any individual member of an African tribe from that region would be automatically at risk on return to Khartoum or as a internally displaced person in or around Khartoum.

36. On the 18th May 2004 UNHCR accepted that "Sudanese of non Arab Darfurian background returning to Sudan faced heightened risk of scrutiny by the security apparatus ... internally displaced persons from Darfur often faced protection risks including forced relocation and forced return". But the area around Khartoum has 1.8 million internally displaced persons of who some hundreds of thousands are from the Darfur region and most of whom will be from the "African" tribal groups. This appellant was found to be at risk of persecution in Darfur because of his ethnic origin. To suggest that this appellant on any return and on relocation to Khartoum faces a real risk of persecution or indeed a real risk of ill-treatment contrary to Article 3 of the European Convention on Human Rights is tantamount to accepting that all and every internally displaced person within Khartoum faces such a risk. Had that been the case we are satisfied that UNHCR with long and careful knowledge of the area would have so indicated by now. Internally displaced persons in the Khartoum area clearly face a number of difficulties. It may be that for some there may be a real risk arising out of the fact that the authorities would target them as active sympathisers of armed rebel groups or as persons connected with opposition political groups. But we cannot accept that there is a real risk there to this individual appellant. We are conscious of having to consider this matter on a "case by case" basis as urged by UNHCR. There is no evidence to suggest that this appellant would be perceived as involved with armed rebel groups or opposition political groups or that he would inextricably be driven to the worst circumstances for internally displaced persons in Khartoum, where ever they may be. The previous decisions of the IAT, which we accept, do not suggest there is likely to be an automatic risk of serious harm or ill-treatment contrary to Article 3 in the Khartoum area.

37. Nor do we accept that this appellant will be singled out at Khartoum airport on any return. His ethnicity may be clear but it does not follow

from that that he will be targeted, arrested and persecuted or ill-treated.

38. We note finally that the adjudicator when considering this appellant's case agreed that the Massaleit do not suffer at the hands of the authorities outwith the Darfur area and that there are many displaced people from Darfur living elsewhere in the Sudan. He also accepted that by moving elsewhere in the Sudan the appellant's "persecutors have no interest in him" and such a move "may result in his being safe."

Decision

39. For the reasons given we consider the adjudicator made a material error of law in the manner in which he treated the possibility of the appellant being internally relocated within Sudan away from the Darfur area.

40. We went on to reconsider the case. We concluded for the reasons given that internal relocation within Sudan outside the Darfur area is available for the appellant. We do not consider that the evidence available leads to the conclusion that the appellant would face a real risk of persecution or a real risk of ill-treatment contrary to Article 3 of the ECHR on any relocation to the Khartoum area.

41. The following decision is accordingly substituted. The appeal against the decision dated 19th April 2004 by the Secretary of State to refuse to vary leave to enter or remain in the United Kingdom for this appellant is dismissed.