



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

AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 00282 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 12-14 February 2019
And on 10 July 2019**

Decision & Reasons Promulgated

Before

**UPPER TRIBUNAL JUDGE PITT
UPPER TRIBUNAL JUDGE BLUM**

Between

**AAR
&
AA
(ANONYMITY DIRECTIONS MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For Appellant AAR: Mr C Jacobs, Counsel instructed by Fountain Solicitors
For Appellant AA: Mr T Hodson, In-House Advocate at Elder Rahimi Solicitors
For the respondent: Mr J Anderson,
Counsel instructed by the Treasury Solicitor

The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) requires revision. Those cases should still be followed.

DECISION AND REASONS

INTRODUCTION

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) the Upper Tribunal continues the anonymity orders made by the First-tier Tribunal. 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 appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
2. The question in these appeals is “whether the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) requires revision in the light of the current country evidence including consideration of internal relocation of non-Arab Darfuris to Khartoum.”
3. For ease of reference, for the purposes of this decision we use the abbreviated term “Darfuri” to mean a non-Arab Darfuri.
4. The profiles of the two appellants which fall to be assessed against the country evidence are not in dispute.

AAR

5. The first appellant, AAR, is a citizen of Sudan, born in 1993. He is from the Berti tribe and is a Darfuri.
6. On 2 March 2017, AAR claimed asylum in the UK. His asylum claim was that he moved to Omdurman and then to Abu Hamad in North Sudan to dig for gold. In April 2014 he was stopped by people in civilian clothes and questioned. He was detained because he was a member of the Berti tribe. He was accused of supporting the opposition but this accusation was made merely because he was Darfuri. He was mistreated during the detention. He was released on conditions, including being required to report every week, refraining from digging for gold and avoiding any involvement with the opposition. AAR left Sudan in May 2015 and attempted to travel to Israel via Egypt. He was encountered by the authorities in Egypt on the border as he attempted to enter Israel and was returned to Sudan. He was detained by the Sudanese authorities on return and then either escaped from detention or was released on bail. He returned to prospecting for gold on the Libyan border and left to cross into Libya in September 2015, arriving in the UK in March 2017.
7. In a decision dated 29 August 2017 the respondent refused AAR’s asylum claim. The respondent accepted AAR’s claim to be a member of the Berti tribe and a Darfuri but did not accept that he was ever arrested and detained or that he was wanted by the Sudanese authorities. It was not accepted that he would be at risk on return.
8. AAR appealed against the refusal of his asylum claim. On 6 November 2017, the First-tier Tribunal dismissed his appeal. The Tribunal did not find AAR’s account to be credible. It was not accepted that he had been arrested or detained or that the

authorities in Sudan had kept a record on him. The First-Tier Tribunal found that AAR had not been involved in politics and did not have any particular profile of any kind, other than his Darfuri ethnicity.

9. The First-tier Tribunal considered the respondent's Country Policy Information Note (CPIN) dated 4 August 2017 and found that it provided cogent reasons to depart from the guidance given in AA (Sudan) and MM (Sudan).
10. The appellant appealed against the decision of the First-Tier Tribunal. In a decision dated 3 January 2018, the First-tier Tribunal granted permission to appeal to the Upper Tribunal.
11. In a decision dated 16 May 2018, the Upper Tribunal upheld the adverse credibility findings but found an error of law in the approach of the First-Tier Tribunal to the CPIN, the extant Country Guidance cases and the guidance of the Court of Appeal in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940. The Upper Tribunal set aside the decision of the First-Tier Tribunal and identified that the appeal was suitable for hearing as a Country Guidance case on the question set out in paragraph 2 above.

AA

12. The second appellant, AA, is a citizen of Sudan, born in 1991. He is from the Zaghawa tribe and is a Darfuri.
13. AA entered the UK illegally on 23 January 2016 and claimed asylum on the same day. His asylum claim was that he was detained in Sudan on 11 October 2014 for a period of 7 days merely because he was Darfuri and thereafter held for 5 months at a government army camp near Al Fasher city in North Darfur where he claims he was forced to clean and cook for the soldiers. He was able to escape, left Sudan in August 2015 and made his way to the UK.
14. The respondent refused AA's claim in a decision dated 9 November 2017. The respondent accepted that AA was a Darfuri but did not accept that he had encountered problems with the Sudanese authorities.
15. On 6 November 2017, the First-tier Tribunal dismissed AA's appeal. The First-Tier Tribunal found that the appellant had been detained as claimed but only on the basis of his Darfuri ethnicity. It was not accepted that he had suffered ill-treatment that amounted to persecution. The First-Tier Tribunal referred to MM (Sudan) but found that the appellant had not shown that he would be persecuted on return.
16. The appellant appealed against the decision of the First-Tier Tribunal and on 8 February 2018 he was granted permission to appeal to the Upper Tribunal.
17. In a decision dated 16 May 2018, the Upper Tribunal upheld the finding that there had been no past persecution but found that the First-Tier Tribunal had taken an incorrect approach to the Country Guidance cases of AA (Sudan) and MM (Sudan) and whether it would be unduly harsh for AA to relocate internally within Sudan. The Upper Tribunal reserved the re-making of the decision. The case was

subsequently identified as suitable for linking with AAR to consider the question set out in paragraph 2 above.

Further Background


18. Both appeals were listed for hearing in mid-August 2018. However, very shortly after the error of law decisions, the respondent indicated that he intended to conduct a fact-finding mission to Sudan between 10 and 17 August 2018. The purpose of the mission was to gather information about the circumstances of Darfuris in Sudan, with a focus on Khartoum, and the treatment of returnees generally. That mission formed the basis of a report published in November 2018, entitled "Report of a fact-finding mission to Khartoum, Sudan". We refer to this report as the "FFR".
19. Having been served with the FFR, the appellants jointly instructed three experts to comment on it and provide their opinions on the question raised in these appeals. The Tribunal was provided with reports from Dame Rosalind Marsden, former British Ambassador to Sudan, from Ms Madeleine Crowther, Co-Executive Director of Waging Peace, an NGO focussing on Sudan, and Mr Peter Verney, an expert on Sudan who had provided reports in many Sudanese appeals.
20. The appeals were heard on 12-14 February 2019. In addition to hearing extensive oral evidence from the witnesses set out above, the Upper Tribunal also heard oral evidence via video link from Khartoum from a civil society activist in Sudan.
21. The witnesses provided evidence on the ongoing civil uprisings in Sudan which had begun in November 2018 and increased during the following months. It was uncontentionous that the regime had attempted to suppress the protests by violent means and had carried mass arrests with widespread reports of mistreatment of detainees.
22. The respondent submitted that the evidence on the protests and the government's response did not show a sufficient specific interest in Darfuris to impact on the question of a general risk on return for Darfuris who had no profile other than their ethnicity and having claimed asylum in the UK. The appellants argued that the behaviour of the Sudanese regime in the face of the civilian protests showed that there remained a risk on return for all Darfuris who had claimed asylum in the UK.
23. The Tribunal reserved its decision at the end of the proceedings on 14 February 2019.
24. The situation in Sudan remained volatile and, at times, deteriorated. President Bashir was ousted by the military on 11 April 2019. The head of the notoriously abusive National Intelligence Service (NISS), Salah Gosh, resigned on 13 April 2019. A state of emergency was then declared for 3 months by the Transitional Military Council (TMC). The TMC stated that it wanted to enter into a dialogue with civil society. Protestors remained on the streets whilst discussions took place.
25. Towards the end of May 2019 and in June 2019 there were a number of attacks on protestors across the country. The Rapid Support Forces (RSF), often referred to as the Janjaweed, were deployed in Khartoum. The worst incident appears to have been on 3 June 2019 when the main protest site in Khartoum was attacked and at least 40

bodies were recovered from the Nile, having been thrown there by the RSF. Protests intensified, reprisals continued and the internet was shut down.

26. The Tribunal reconvened for a Case Management Hearing on 10 July 2019 to hear submissions from the parties on the appropriate way forward in light of the continuing upheaval in Sudan. The respondent provided a "Response to an Information Request - Country: Sudan" dated 17 June 2019 which detailed the events set out above.
27. The respondent submitted that the proceedings should be adjourned until September 2019 when the situation in Sudan might be clearer. In the week prior to the Case Management Hearing, for example, internet access had restarted and there were signs that an agreement between the TMC and the civilian opposition alliance would be reached.
28. The appellants maintained that the situation in Sudan remained unpredictable such that adjourning for a further 3 months was not appropriate and submitted that the Tribunal should proceed to determine the appeals which had to be allowed where the situation in Sudan could not be said to amount to the "very strong grounds supported by cogent evidence" required for a Country Guidance case to be considered no longer authoritative and set aside or replaced; SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 considered.
29. After some discussion, in light of the volatility of the situation in Sudan, the absence of the cogent evidence needed to set aside existing Country Guidance and in light of AAR and AA having waited for an extensive period of time for a final determination of their protection claims, the respondent conceded that a further delay was not appropriate and that the appeals should be determined on the basis of the existing Country Guidance cases. The respondent accepted that this meant that the appeals had to be allowed where the appellant's profiles as Darfuris brought them within the ratio of AA (Sudan) and MM (Sudan). The Tribunal allows the asylum appeals of AAR and AA on that basis.
30. The answer to the Country Guidance question that was originally asked in these appeals is as follows. The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) requires revision. Those cases should still be followed.

Decision

31. The decisions of the First-tier Tribunal disclosed an error on a point of law and are set aside.
32. The decisions are re-made as allowed on asylum grounds.

Signed: 

29 July 2019

Upper Tribunal Judge Pitt