Asylum and Immigration Tribunal

LM (Relocation – Khartoum –*AE* reaffirmed) Sudan [2005] UKAIT 00114

THE IMMIGRATION ACTS

Heard at Hatton Cross	Determination Promulgated
On 18 May 2005	30 June 2005

Before

Mrs J A J C Gleeson
(Senior Immigration Judge)
Mrs C Bart-Stewart
(Immigration Judge)

Between

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Quee, Legal Representative of Noden & Company, Solicitors

For the Respondent: Ms L Tedeschini
Home Office Presenting Officer

[Return to Sudan safe for man with no political profile, eastern Sudanese (African origin) returning with young family. AE applied and US State Department Report (not before Tribunal in AE) considered. Must show individual risk to appellant; Darfurian origin or African ethnicity alone insufficient. No risk at Convention level to non-Darfurian Sudanese.

Conditions in camps not ideal but evidence not sufficient to establish that internal relocation to internally displaced person camp in Khartoum alone

enough to meet ECHR Article 2 and 3. Risk in internally displaced person camps limited on present evidence to students, lawyers, merchants, traders or those with perceived rebel profile who are of African ethnicity. Those with family members still in Sudan required to prove need to use internally displaced persons' camp.]

DETERMINATION AND REASONS

1. This case is reported for what it says at paragraphs 56-61 about risks to failed asylum seekers returning to the Khartoum area of Sudan, where that is not their home area, and in particular, to the risks in Khartoum internally displaced persons' camps. The hearing was a continuation reconsideration of the appellant's appeal, remitted for fresh consideration by the Immigration Appeal Tribunal before 4 April 2005, when the present Tribunal succeeded it. The procedural history of the appellant's claim is as follows: the appellant arrived in the United Kingdom on 20 October 2002 and applied for asylum two days later. His asylum claim rests upon his family and personal connection with the Beja Congress Party in the Sudan.

2. The Secretary of State refused to recognise him as a refugee, the reasons appearing in a letter accompanying a notice of refusal dated 10 January 2003. The letter of refusal also dealt adversely with his Article 2 and 3 claims under the European Convention on Human Rights and Fundamental Freedoms 1950.

3. The Secretary of State's reasoning was that the appellant's account was vague, unconvincing and lacked substantive detail or any credible corroborative evidence (although of course, in asylum cases, corroborative evidence is not a requirement). The Secretary of State expressed credibility reservations in relation to the appellant's account of his political activities, his escape from hospital on payment of a bribe, his time in hiding with his uncle, and his exit from Sudan. Overall, the appellant considered that the appellant was not telling the truth and that there was no risk on return.

History of this appeal

4. The appellant appealed to an Adjudicator (as she then was). The Grounds of Appeal suggested that the Secretary of State's decision was against the weight of evidence, that the claim of political and ethnic exclusion and discrimination had not been dealt with, and that his claim engaged Articles 2, 3, 6, and 8 of 'the Human Rights Act 1998'[sic], which is presumably a reference to the European Convention on Human Rights. Article 6 is not applicable in asylum determinations (*Maaouia v France* (2001) 33 EHRR 42*).* The appellant did not rely upon Article 8 ECHR at the Adjudicator hearing. The appellant's wife had remained in the Sudan when the appellant fled but she joined him here in 29 June 2003, a fact which the appellant chose not to disclose or rely upon until the hearing of the reconsideration on 18 May 2005.

The appellant has been legally represented throughout, at first by Dillons & Co, and latterly by Noden & Company.

5. The appellant gave evidence at the Adjudicator hearing. The Adjudicator did not find his account credible, for the reasons she set out in paragraphs 15-26 of her determination, and considered that the appellant would not be at risk if returned to Sudan today. The appellant appealed, characterising the Adjudicator's consideration of credibility as speculative and inadequate, and relying upon *Chiver (10758).* The appellant contended that the Adjudicator's determination lacked anxious scrutiny. The IAT granted permission to appeal on concerns about the Adjudicator's treatment of the claimed detention and the appellant's claimed political activities.

6. The Immigration Appeal Tribunal allowed the appellant's appeal. It considered that the determination was almost entirely devoid of factual findings, in particular in relation to the claimed arrest and detention of the appellant. The IAT remitted the appeal for hearing afresh.

Preliminary issue

7. At the beginning of the hearing, there was a preliminary issue. The appellant alleged that his wife had applied on arrival, or soon after, to Immigration Officers at Croydon to be treated as his dependant, and asked therefore that she and the two children be treated as dependants for Article 8 purposes in the reconsideration hearing. There had been no advance notice of this argument and no evidence was available to support the suggestion that the Secretary of State (and the appellant's representative) had overlooked the dependency element in the preceding two years, despite hearings at first and second instance. A skeleton argument was produced at the hearing before this panel, but not until the hearing had begun, which deals for the first time with Article 8, arguing that the appellant and his wife have an established private and family life and that to ask his wife to return to Sudan with him would constitute a disproportionate interference with this appellant's Article 8 rights. We shall return to that argument.

8. The Home Office Presenting Officer objected to the dependency application as far too late and taking her by surprise. She was however able to deal with the skeleton argument and a witness statement signed by the appellant's wife the day before the hearing (which also, unfortunately, was not disclosed until the middle of the hearing before us).

9. We had hoped to hear evidence from the person at the appellant's solicitors with conduct of these proceedings, to explain (with the file) why the dependency claim was raised so late. We adjourned when the problem became apparent, and directed Mr Quee, who is not legally qualified, to telephone Miss Shamim, who has conduct, and ask her to attend court. Mr Quee indicated that Miss Shamim had initially refused to attend, and then, after taking advice from her supervisor, indicated that 'she was in difficulty but if [the Tribunal] insist that she should come to Court, she will have to leave

what she is doing to come, so as to arrive at 2 p.m. If you insist, however, given her workload she is prepared to send a letter to Court to confirm what she disclosed to [Mr Quee]". That was a completely inappropriate reaction to a direction from the Tribunal to attend. On further questioning Mr Quee, it appears that Miss Shamim is not a solicitor (and nor is Mr Quee). We decided to proceed with the documents which had become available during the adjournment, the skeleton argument and the appellant's wife's witness statement, but we record our concern as to the casual treatment of this appellant's claim and this Tribunal by Noden & Company.

10. Absent any evidence of the alleged visit to Croydon to claim as a dependant in 2003, or any mention of his wife and children before the Adjudicator or the Immigration Appeal Tribunal, we refused the variation application and proceeded to hear the reconsideration substantively. It may be that the appellant's wife and children have their own claim, but that is not a decision with which we are seised, that claim having apparently not been made yet to the Secretary of State, let alone refused.

11. The professional issue has no relevance to the outcome of this appeal and we put it out of our minds in considering whether the appellant could show a credible account putting him at risk on return. The Tribunal decided to refuse the application to add the appellant's wife and United Kingdom-born children as dependants at this late stage.

12. We then proceeded to deal with the substantive reconsideration, on the basis that the original Adjudicator had made a material error of law and that further findings of fact were needed before we could proceed under rule 31(3) to substitute a fresh decision to allow or dismiss the appeal.

13. The Tribunal heard oral evidence from the appellant and his wife, and oral and written argument from the appellant's legal representative. We also heard oral argument from the Presenting Officer.

Standard and burden of proof

14. We reminded ourselves of the low standard of proof appropriate to claims under the Geneva Convention on the Status of Refugees and Stateless Persons 1951, its protocols, and the European Convention on Human Rights and Fundamental Freedoms 1950. The appellant must show a reasonable degree of likelihood or real risk that his core account is true, and that the appellant would suffer persecution or treatment contrary to the relevant Article of the ECHR on return to the Sudan. Such a credibility decision must be based on all the evidence before us, including oral evidence, personal documents, and country background evidence of country conditions. We also remind ourselves that in certain circumstances, even a returning asylum seeker whose claim is not credible may be at risk, and that we must therefore consider the country background evidence in this respect also. The burden of proof, at the lower standard, remains on the appellant to show that his claim engages a relevant provision of the Refugee Convention or ECHR.

Documents and materials before the Tribunal

15. We had the following evidence and materials before us for the hearing:

    (a) The Home Office bundle and all material previously filed

    (b) The Adjudicator's and Immigration Appeal Tribunal determinations;

    (c) a bundle (60 pages) of personal and country background evidence filed by the appellant under cover of a letter of 3 May 2005;

    (d) a skeleton argument dated 13 May 2005, produced at the hearing today;

    (e) an additional witness statement, for Mrs Ramli Mazza Khaled, dated 17 May 2005, produced at the hearing today; and

    (f) CIPU Country Report for Sudan, April 2005, filed at the hearing today by the Presenting Officer.

16. The appellant's bundle contains a letter purporting to be from the Beja Congress Party in the United Kingdom. Dr MA Sharif, a Consultant Psychiatrist who does not indicate his rôle in the local Party, writes on badly photocopied letterhead with a hand-written address at the top. Dr Sharif recites the appellant's account but not from his own knowledge. Dr Sharif does not mention any United Kingdom activities undertaken by the appellant. Dr Sharif begs that the appellant be allowed to stay, offers to be telephoned and to attend Court 'if I have no commitments'. Even if genuine, this letter is of little value to us in assessing the appellant's commitment, if any, to the Beja Congress Party, either in the United Kingdom or in his country of origin.

17. The bundle of papers prepared for our hearing includes two birth certificates for children born to the appellant and his Sudanese wife, Mazza Ramil Khaled. They now have two British-born children: a son, Mohamed Mohamed Lufty (born 16 February 2004) and a daughter, Zeinab Lutfuy Mohamed (born very recently, 29 March 2005). Those dates are consistent with her arrival in the United Kingdom in 29 June 2003 as now stated.

The appellant's evidence and core account

18. The appellant's core claim is this: he was born in Sudan on 15 May 1969, and attended primary and technical school until 1985, when he completed his education and trained as a carpenter. In 1986, the appellant established a carpentry workshop, and in 1988, the appellant also became a broker. In 1992, the appellant claims to have joined the Beja Congress Party. In August 1998, the National Islamic Security Junta arrested the appellant's father.

19. On 18 December 1998, the appellant married Ramli Khaled. On 10 June 1999, his father was released, but sadly died nine days later because of his treatment in detention. Eighteen months later, on 10 January 2002, the appellant's home was raided and the appellant was arrested. The appellant

was transferred to Sawaken Prison on 11 July 2002, and hospitalised (under guard) on 25 September 2002. The appellant 'escaped' five days later after his uncle paid a bribe. The uncle, who is a wealthy man and a trained broker also, sheltered him until 19 October 2002, when the appellant was taken to Khartoum and introduced to an agent. On 20 October 2002, the appellant flew to the United Kingdom, where the appellant claimed asylum on 22 October 2002.

20. The appellant's Statement of Evidence Form indicated reliance on Refugee Convention grounds of race, ethnic origin or nationality and political opinion. The appellant claimed that his father was arrested for his political involvement with the Beja Congress Party, of which the appellant was a Port Sudan Committee member. That is not the appellant's case now; the appellant says his father was a farmer and was arrested in error. It was not his case in the Statement of Evidence Form that either the appellant or his father was charged with any offence, but he contends that both were detained for Beja Congress Party activities. The appellant claimed the Beja Congress Party was operating clandestinely in Sudan. The appellant claimed to be an ordinary active member, and that the Party wanted to topple the dictatorial régime in Sudan, and stood for genuine democracy, equality of nations and nationalities, multi-party Government in Sudan, fair and free elections and freedom of speech and press. The Party was a banned Party and rallies, demonstrations and public meetings were forbidden.

21. The appellant set out the tortures suffered by him. The Statement of Evidence Form version was vague: 'assault, harassment and gender abuse…punished, degraded as human being and my human rights was violated'. In the statement accompanying the Statement of Evidence Form, the appellant claims to have been 'beaten and interrogated' and asked to provide names of members. The appellant became ill and had malaria, hence the hospital admission. His uncle paid a bribe and the appellant went to Senkat to hide before leaving for the United Kingdom.

22. At his asylum interview, the appellant's account evolved. The appellant now claimed that he had been recruiting members and distributing leaflets for the Beja Congress Party. Meetings took place in the house of one of the members (usually the appellant's home), but his house had no address, as the house was temporary accommodation. The appellant could not give a street name, nor even an area. It was his job to collect donations from new members. The appellant claimed that the organisation demonstrated for schools and hospitals, but the demonstrations were inconclusive because of aggression by the security forces. The last demonstration the appellant attended was in September 2002, which is odd, as the appellant was in hospital or in hiding during that month on his earlier account.

23. The appellant now claimed the security forces came to his home on suspicion that the appellant had leaflets there. They suspected him, and were monitoring his movements. The appellant had received no medical

treatment for his injuries, apart from some tablets on one occasion. The ill-treatment was now described as beatings, having water dropped all over his body while asleep, and personal abuse. The appellant received no medical treatment for the consequences of this ill-treatment, so on that basis, the hospitalisation must have been for his malaria.

24. The appellant explained more about his escape. The guard of the back gate of the prison had helped him to escape in return for a bribe. Senkat was half an hour by car from the Port Sudan. His uncle smuggled him to Khartoum in the back of a lorry and paid approximately $3500 for his travel to the United Kingdom. The appellant got through the airport by changing out of the Jalabiya, which everyone in Sudan wore, into a shirt and trousers, which he claims was enough to prove an effective disguise. The appellant had no travel documents; the agent saw to everything. A person in the airport in the United Kingdom told him how to apply for asylum. The appellant was concerned about his wife, who was still in Sudan, as the appellant had not heard anything about her (this was in November 2002).

25. In his evidence to the Adjudicator in November 2003, the appellant added that security forces found no leaflets when searching his home. His carpentry business had failed, which was why the appellant had become a broker. The appellant still relied on only one arrest.

Oral evidence before this Tribunal

26. We have heard evidence from the appellant and his wife. Mrs Ramli Mazza Khaled gave evidence in Arabic against a short witness statement, which confirms the birth of the children. The statement recites that it was translated to her, but it was not. She told us that the solicitors gave her the statement to sign, and she simply signed it. The address for residence given is incorrect; although the appellant's wife signed her statement the day before the hearing, neither the appellant nor his wife could tell the Tribunal with any certainty what their new address was.

27. Mrs Khaled was not well. She has medical consequences from the birth of their daughter (no medical report, but she was obviously uncomfortable). She could not sit down, so gave her evidence standing and walking round the Court. We took her evidence as briefly as possible, since she looked as though she might faint. His wife found her way to the appellant without difficulty in late June 2003 despite their having completely lost touch after his escape from Sudan. She knew the appellant was here. She had no evidence of having claimed as a dependant in June 2003. She was from the Beja tribe also.

28. We then heard the evidence of the appellant. The appellant had signed a witness statement which recited interpretation by two different people (irreconcilably). The address was wrong and the appellant could not say where he and his family lived now. He signed that statement on 21 April 2005. The appellant asserted in that statement that the Beja Congress Party was still

banned and that the agent might have provided false identity documents for him. The appellant did not know whether the documents were false or not, and that does not seem to have troubled him. The appellant could now provide evidence of his membership of the Party. All members of the Beja ethnic group in Sudan were persecuted. In supplementary questioning from his representative, the appellant adopted the other evidence, and asserted a continuing fear on return. The authorities in Sudan would not have forgotten him and would torture him again.

29. We took cross-examination after the short adjournment. The appellant confirmed the expanded version of his rôle given since the asylum interview. The reason the authorities had not found the leaflets was that they were stored with a friend of his, in a ditch. The appellant was unaware of the armed struggle and violence in which the Beja Congress Party had become involved in 1989. The appellant thought the Party's unilateral ceasefire began in 1992 (it was December 2003).

30. The appellant himself had not taken part in any demonstrations. The appellant was unable to explain how a secret organisation managed to hold public demonstrations, as he had not attended any. The appellant cast aspersions on the standard of interpretation of the asylum interview, but these had not been raised previously. The appellant now claimed to have been tortured with hot irons (a version given for the first time before the Adjudicator). The appellant showed the Tribunal body scars, but there was no medical report as to how, or when, they might have been sustained.

31. In relation to his stay in hospital and his escape, the appellant could not describe how many beds there were, either in his prison cell or the hospital ward. He claimed to have shared a ward with another person, who received visitors regularly. The doors were open at all times and anyone could have visitors. When the time came for his escape, the guard gave him a Jalabiya to change into, and then went to get the other man a glass of water and the appellant simply walked out. The appellant had no idea how big the bribe to the guard for his release had been. The appellant had grown a beard in detention (mentioned for the first time before us) and so was unrecognisable at the airport later. We consider that his captors would have noticed the beard and adjusted any description accordingly if one were circulated.

Submissions

32. Ms Tedeschini relied primarily upon the letter of refusal. The appellant's account was riddled with discrepancies and should be treated as incredible. She cited the secret nature of the Party as contrasted with the public demonstrations; the variable nature of the escape and torture accounts; the appellant's three weeks in Senkat without difficulties; and the lack of medical evidence. Merely changing into western clothes at the airport would not have been sufficient to disguise the appellant's identity, as the authorities would check very thoroughly for people on their 'wanted' list and they would

certainly have been looking for a bearded man, if the appellant had a beard when he escaped, as now claimed. She asked us to place very little weight on the London Beja Congress Party letter.

33. Even if the appellant's account were credible, the appellant was never charged and there was no current evidence that mere membership of the Beja Congress Party was enough to put him at risk on return. Articles 2 and 3 should stand or fall with the asylum claim. As regards Article 8, there was no family member with settled status in the United Kingdom and the appellant and his family had not been in the United Kingdom for very long. It was not disproportionate to expect him to return with his wife and two children and resume living in Sudan.

34. Ms Tedeschini asked us to dismiss the appeal.

35. For the appellant, Mr Quee referred to his skeleton argument. That document, dated 13 May 2005, does not deal with the current estrangement between the NDA and the Beja Congress Party, but relies on their previous links. The Tribunal is asked to recognise the appellant's non-Arab ethnicity, his former and continuing membership of the Beja Congress Party, his political activities and consequent status as an opponent of the Sudanese Government, and the risk from the Janjaweed on return. In relation to the Refugee Convention, similar arguments are repeated more shortly on Articles 2 and 3, coupled with an allegation that there is in Sudan a blatant disregard for human rights with impunity, such that even suspected political opponents are treated in a manner contrary to Article 3 ECHR.

36. The skeleton argument contends that the appellant has established private and family life within the meaning of Article 8 ECHR in the United Kingdom in view of his three years' stay here. The only specific matter relied upon is his re-established family life with his wife, who has no separate claim or status, and has presented him with two children since coming to the United Kingdom. The appellant argues that return to Sudan would be disproportionate in the light of the deteriorating human rights situation there and thus an unlawful interference with his Article 8 rights.

37. In his oral submissions, Mr Quee accepted that Articles 2 and 3 of European Convention on Human Rights would stand or fall with the asylum claim. Mr Quee relied upon *Huang, Abu Qulbain and Kashmiri* [2005] EWCA Civ 105 and the test therein of 'truly exceptional' circumstances. Taken in the round, the appellant argued that this appellant's circumstances were indeed truly exceptional in the light of the ongoing conflict in Eastern Sudan (paragraphs 6.123-6.126, and 6.216). It was not always safe for those returning to their homes.

38. Mr Quee invited the Tribunal to find that the appellant would return with his wife and children, who were both very young indeed. The appellant would return to Sudan, where the situation in internally displaced persons camps

was not ideal. The appellant would make his way to eastern Sudan, where the appellant would be in difficulty. The Tribunal reminded Mr Quee that the test was not whether it was ideal but whether it would be unduly harsh or unreasonable to return this appellant and his family to Khartoum. Mr Quee argued that as the appellant came from a non-Arab ethnic group, it would indeed be unduly harsh to return him, especially given the complicity of the Sudanese Government in relation to the activities of the Janjaweed and the likely treatment of the family in an internally displaced person camp.

39. The appellant asked the Tribunal to assess the appellant's evidence and make appropriate findings in the light of the evidence. If it were credible that the appellant had been involved with the Beja Congress Party in Sudan or the United Kingdom, Mr Quee relied upon p104 of the CIPU Country Report on Sudan linking the Beja Congress Party and NDA. The appellant would be regarded as a suspected opponent of the régime (paragraphs 6.2, and pages B7 and B10 of the appellant's bundle). There was an ongoing conflict between the Sudanese Government and persons residing in the eastern part of Sudan. Paragraphs 6.123 and 6.126 of the Report reflected the likely risk on return.

40. As to the method of escape, checks at the airport were casual (paragraph 6.1140). In his own country background bundle Mr Quee relied only upon excerpts from the April 2005 CIPU Country Report as set out above, and two passages in the 2004 US State Department Report (pages B7 and B10 of that bundle) indicating that there were ongoing difficulties with the security forces in Sudan, and that there was still a pattern of short detentions without charge, with or without torture, under the present Government. We consider that in some detail, since it appears that this document was not placed before the President's Tribunal when it considered the case of *AE*. Mr Quee did not rely upon any other country background documents in his bundle (though we did see and consider the birth certificates and the London Beja Congress Party letter).

41. The Tribunal reserved its determination for postal delivery, which we now give.

Summary of country background evidence

42. The CIPU Country Report for April 2005 gives a chronology of events in Sudan, in which the relevant milestones are as follows. In 1989, Lt General Omar Hassan Ahmed Al-Bashir took power after a bloodless coup and dismantled the civilian ruling apparatus, banning political parties and declaring a state of emergency. The Beja Congress Party turned to armed struggle in that year. Mr Al-Bashir remains in power. Since 1999, political parties are permitted again under strict conditions, and opposition parties which comply may contest elections (5.16). There were 20 officially registered political parties at the end of 2004 (5.17). The Political Parties Act allows some formerly banned parties to resume their activities, but they must notify the registrar in writing to participate in elections.

43. The country has suffered a 21-year north-south civil war, but since August 2004, efforts are being made to end it, in the light of the humanitarian crisis in Darfur. Human rights abuses have been committed in Darfur by both sides. The Government signed a permanent ceasefire with the SPLM/A in December 2004, and peace talks are continuing with the SPLM/A, the JEM, and the NDA. A unilateral ceasefire has been in effect since November 2003 pending the north-south peace talks. The Beja Congress Party declined to attend the January 2005 Government of Sudan talks with the NDA in Cairo which led to a preliminary peace agreement between those two parties, instead presenting a list of demands to the Government authorities in Port Sudan, and there appears to be a split between the two parties. The Beja Congress Party and the Free Lions Association are now reported to have merged to form a new group called the Eastern Front.

44. There was a mass demonstration by thousands of Beja in support of the Beja Congress Party demands in January 2005. The security forces fired on the demonstration when protesters began rioting; excessive force was used. (6.126) Demonstrations remain banned and the Government broke up demonstrations in Port Sudan in east Sudan in January and February 2005, with deaths and arrests of demonstrators as the demonstration against socio-economic and political marginalisation turned violent (6.67). It is clear from the evidence that those with a genuine political profile may well be at risk on return today.

45. The Beja have suffered long-term discrimination (6.123) and are vulnerable to malnutrition, famine and contagious disease in Eastern Sudan.

46. in relation to transit through the airport, paragraphs 6.113-6.114 confirm that bribery has been used to obtain passports, exit visas and to pass border controls, provided individual travellers are not specifically 'wanted'. As recently as 2005, the Foreign and Commonwealth Office accepted in a letter that it was probable that bribery was used for these purposes but that the FCO had been unable to source or verify that assumption.

47. IRIN recorded in October 2004 and February 2005 that it was not always safe for those returning to their homes (6.216). Paragraph 6.107 indicates that Article 23 of the 1998 Constitution of the Republic of Sudan guarantees freedom of movement and residence, of exit and entry to Sudan, and the US State Department Report for 2004 published on 28 February 2005 indicates that movement was generally unhindered for citizens outside the war zones, provided they could produce an identity card. Sudanese embassies abroad would issue passports to Sudanese nationals on proof of identity (paragraph 6.109).

Findings of Fact and Credibility

48. We considered first what facts had been proved to the appropriate lower standard by the appellant's evidence. The appellant no longer contends that his father was associated with the Beja Congress Party. The appellant is

a carpenter by trade, whose business failed. The appellant and his uncle were brokers, and the appellant lived and worked in Port Sudan in eastern Sudan, the home of the Beja tribe, who suffer discrimination in that area. The appellant is married to a woman of the Beja tribe and they now have two children born in the United Kingdom. Those facts are accepted.

49. The question is whether any of the appellant's account about his Beja Congress Party membership can be accepted as credible, even at the lower standard appropriate for the Geneva Convention on the Status of Refugees and Stateless Persons 1951 and the European Convention on Human Rights and Fundamental Freedoms 1950.

50. We reminded ourselves of the incremental nature of the appellant's account; of his statement that the ceasefire was in 1992 (it was in December 2003); of his conflicting account as to whether the appellant attended demonstrations and his lack of knowledge of the armed struggle in which the Beja Congress Party has been engaged since 1989. We also considered the points set out in the Secretary of State's submissions at paragraph 31 above.

51. We do not believe, even to the lower standard, that the appellant was, or is, a member of the Beja Congress Party. His knowledge of the Party is simply too sketchy to be credible at any level.

52. The letter of support from Dr Sharif of the United Kingdom Beja Congress Party does not assist us; we are not satisfied that it is a genuine document, to in line with the guidance set by the Immigration Appeal Tribunal in *Tanveer Ahmed* [2002] UKIAT 00439 (starred). Even if it were genuine, the letter consists only of a recital of the appellant's own account. It shows no knowledge of any activities the appellant may have undertaken in the United Kingdom or elsewhere.

53. If we are wrong, and the appellant had some limited Beja Congress Party sympathy or involvement, we find that it was at the lowest possible level and that the appellant has no political profile, which is confirmed by the ease with which the appellant passed through the airport on his way to the United Kingdom. We note that on his own (latest) account, the appellant has never attended a demonstration and thus would not be publicly identified with a party which, despite his allegations to the contrary, is not a secret organisation, but has a public profile enabling it to put demands on behalf of the Beja to the Sudanese Government.

54. We entirely disbelieve the account of his detention and escape. The appellant could not describe his cell or the hospital room with any accuracy. There were multiple discrepancies in the appellant's account of how the appellant left the hospital. Most significantly, the account of his abuse at the hands of the security forces changed dramatically in each version. At the top of each shoulder, the appellant has two well-faded parallel lines of identical length, which look rather like epaulette stripes. They could be

anything; they could even be a tribal mark. There is also a similar mark on one elbow and one wrist. Absent medical evidence, it is impossible to conclude that these are reasonably likely to be torture scars. The appellant told us that the marks did not require treatment; they healed by themselves.

55. We also note that the appellant concealed the arrival of his wife and we do not believe that they lost contact. It is clear from her evidence that she came to the United Kingdom to join him and knew precisely where to find the appellant on arrival. Two children now enlarge the family unit and we see no insurmountable obstacle to their returning to Sudan as a family unit today.

56. We considered whether we should make an adverse credibility finding based upon section 8 of the 2004 Act. We consider that the appellant's failure to disclose the arrival of his wife and the existence of his two young children until the second hearing at first instance is conduct under s.8 (2) (a) and (c) and does further damage his credibility, but that damage is not material in that we have already found his core account to be incredible even at the lower standard appropriate for Refugee Convention and ECHR claims.

Conclusions

57. The appellant therefore falls to be treated as a person with no particular profile, returning to Sudan with his wife and young family. The appellant would be returned to Khartoum. It is for him to decide whether to seek to return to his home in the east, and it may be that the appellant does not consider that appropriate. We considered whether it would be unduly harsh to expect the family to remain in the Khartoum area, even if that meant living in an internally displaced persons' camp.

58. We are guided in relation to internal relocation to Khartoum, by the recent decision of the President and Deputy President of this Tribunal in *AE (Relocation-Darfur-Khartoum an option) Sudan CG* [2005] UKAIT 00101 –

> 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 the appellant 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 the appellant will be targeted, arrested and persecuted or ill-treated"

59. We note that (page 21 of 31 of the US State Department Report for 2004)-

"There were estimates that up to 4 million persons were displaced internally due to the civil war. ...Tens of thousands of persons, largely southerners and westerners displaced by famine and civil war, continued to live in squatter slums ringing Khartoum. Refugee International researchers estimated that more than 300,000 refugees and displaced persons returned home during the year.

There were frequent reports of abuses committed against IDPs, including rapes, beatings, and attempts by the Government to forcibly return persons to their homes. The Government forcibly emptied some IDP camps; for example, on November 2, the Government closed two camps (Al Jeer and Otash), using tear gas to drive IDPs out. The Government stated that it merely was moving IDPs to newer, better camps. There also were numerous credible reports that government troops harassed IDPs or denied persons access to camps. On August 3, police reportedly removed 50 newly arrived men from Kalma camp. On August 5, 48 students who attempted to enter Kalma camp were arrested, detained, and then released. ...In December, the Government publicly committed itself to the principle of voluntary relocation of IDPs in cooperation with the U.N. and NGOs, and the International Organization for Migration reported a few voluntary returns. The U.N. reported that IDPs lived in a climate of fear.

The Government pressured IDPs to return home against their wishes. In one instance, foreign observers, visiting an IDP return site in Sani Deleiba set up by the Government, discovered that IDPs who had been forced home and promised assistance to rebuild their homes received two small bowls of sorghum and a piece of plastic sheeting."

60. It is clear that the situation for internally displaced persons in the Khartoum area is far from ideal, but we remind ourselves that the consequences of a long civil war such as this do not themselves engage the Refugee Convention (*Secretary of State for the Home Department v. Adan* [1999] 1AC 293). We do not consider that the Government's stated aim to promote voluntary relocation of internally displaced persons offends against either Convention. The Tribunal in *AE* had before it the expert evidence of Mr Peter Verney in the *AE* case, at paragraph 33 of that determination, as follows -

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

61. The alleged risk in the camps is to 'students, lawyers, merchants and traders' (none of which categories describes this appellant) and 'those from African ethnic groups who are perceived to sympathise with rebel groups'. We consider that the Tribunal in *AE* gave sound reasons for concluding that the evidence, considered in the round, did not demonstrate a risk to a category as broad as 'those from African ethnic groups' without the rider of perceived rebel sympathies. We have taken account of the guidance given in *AE*, and of our duty to consider the facts on a case-by-case basis. We find that the country situation on the material before us is that for those from Darfur, there is, and remains, no general risk on return (see *AE).* Nor is there any general risk to persons returning to internally displaced persons' camps, unless they fall into the categories of students, lawyers, merchants, traders, or possibly those with known or perceived rebel profiles who are from African ethnic groups.

62. As regards persons not from Darfur, there is no evidence before us that satisfies us to the lower standard that there is a risk on return at all, although we accept that conditions in Khartoum for those who have to use the refugee camps are far from perfect. The country background evidence is that it is mostly those from the South and West who are in the camps. The US State Department Report (which was not considered in *AE* and therefore must be considered by this Tribunal on the principles set out in *E and* R [2004] EWCA Civ 49) is vague on the alleged problems of internally displaced persons in the camps. The observations therein, which we are aware are being widely relied upon in attempts to distinguish *AE,* are imprecise and certainly insufficient to establish a risk to persons with no political profile or Darfurian origin, such as this appellant.

63. We turn therefore to the facts of the present case. The present appellant is not Darfurian. He is not a student, a lawyer, a merchant, or a trader. The appellant is of African rather than Arab ethnicity, but he comes not from Darfur but from Eastern Sudan. We consider that he could return there and resume his life with his wife and enlarged family. However, given the difficulties elsewhere in the country and his wife's state of health, it may be that he considers the journey too difficult or that it is otherwise unreasonable to expect him to return to his home area (*Robinson [1998] QB 929*). If that is the case, we find that he could relocate to the Khartoum area, as it appears that he has an uncle in Sudan who could help him resettle, and therefore, this appellant would not necessarily be obliged to live in an internally displaced person camp.

64. The burden of proof, at the lower standard, remains on the appellant to show a real risk or reasonable degree of likelihood of persecution or treatment contrary to Article 2 or 3 of the ECHR if returned, not to his area of origin but his country of origin; this appellant simply has not discharged that burden. The appellant has not established to that standard that a man of his ethnicity, returning via Khartoum with his wife and young family and no political profile,

would be at risk of persecution or treatment contrary to Article 2 or 3 of the ECHR in his home area, nor, particularly, in Khartoum or the surrounding areas.

65. As regards the Article 8 claim, the appellant's time in the United Kingdom has been short. The appellant's children are too young to be in school, the appellant has no job here and no unusually strong connection with the United Kingdom. His connection is with his family members; his wife currently has no separate status in the United Kingdom and can return with him and the children when he is removed. The Secretary of State's decision is not based upon any disclosure of the appellant's family circumstances and evinces no disrespect for his private and family life, and certainly not at the level which could engage Article 8 on a foreign basis (*Razgar* [2004] UKHL 27). There is nothing 'truly exceptional' (*Huang)* about the situation of this appellant and his family, even having regard to the birth of two children and his wife's current post-partum ill health (for which we have no medical report).

66. We note that the Article 8 issue remains open for any application that the appellant's wife may make under the Refugee Convention or ECHR in her own right, but it was not suggested before our Tribunal that she would seek to remain in the United Kingdom alone. Quite the contrary; the appellant's wife joined him here and wishes to be considered the appellant's dependant. The case was argued by Mr Quee on the basis that they would all return together to Sudan.

67. The Immigration Appeal Tribunal remittal is treated as a decision that the first Adjudicator made a material error of law. Our task pursuant to rule 31(3) of the Asylum and Immigration Tribunal (Procedure) Rules 2005, is to substitute a fresh decision to allow or dismiss the appeal. We have taken into account all submissions and evidence before us, together with the s.8 points referred to above, and our substituted decision is that the appellant has not discharged the burden of proof upon him at the appropriate lower standard in relation either to the asylum or the human rights claims argued before us.

DECISION

We find that the original Tribunal made a material error of law and we substitute the following decision -

(i) The appeal is dismissed on asylum grounds, and
(ii) The appeal is dismissed on human rights grounds.

Signed **Dated: 23 June 2005**

Mrs J A J C Gleeson
Senior Immigration Judge