Heard at: Field House

On: 20 May 2004

AA (Kreish ethnicity, Decree 4/B/307) Sudan [2004] UKIAT 00167

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

22 June 2004

Before:

Miss K Eshun (Vice President)
His Honour Judge N Ainley (Vice President)

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Ms M Canavan of Refugee Legal Centre.
For the respondent: Ms K Prendergast, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This an appeal by the claimant from the determination of Mr Boyd sitting as an Adjudicator on 5 November 2003. The appeal is on human rights grounds. The claimant says that as a member of a tribe which will be referred to in this determination as the Kreish, but which is also referred to in some of the documentation before us as "Al Krish" or "Kerash", he would be at risk of Article 3 harm if he were to be returned to Sudan.

2. The claimant arrived in the United Kingdom on 6 July 1997 and claimed asylum that day. His asylum claim was refused. The

Adjudicator who heard the asylum claim did not accept that he had been mistreated or tortured as he had said in the past and further did not accept that he was a member of the SPLM.

3. The asylum appeal to the Adjudicator having been dismissed on 1 December 2000 the appellant then waited before lodging a human rights claim on 31 January 2002. He claimed that he was a member of the SPLM and the authorities were aware of this and that that placed him at risk on return. He produced an SPLM membership card, which was dated 7 October 2003, when he appeared before the Adjudicator in this matter, which he had obtained from Uganda.

4. The Adjudicator followed the findings of the earlier Adjudicator and did not accept that the appellant was a member of the SPLM, he concluded the documentation purporting to show that the claimant was a member of that organisation was highly dubious.

5. The issue of SPLM membership scarcely featured in the arguments before us which centred instead upon whether the claimant with his ethnicity would be at real risk on return, even though he had no political background that was likely to be known about by the authorities.

6. Very shortly after this matter was heard before us there were reports of a ceasefire between the SPLM and the authorities in Khartoum. We have not been able to take into account any of the implications of that ceasefire in this determination, which is based on the material that was placed before us at the hearing.

7. We will deal first with the claimant's ethnicity. We have before us an expert report from Peter Verney dated May 2004 which explains who the Kreish are. They are a large ethnic group from the province of Bahr l-Ghazal. They tend to come from the west of that province and are one of the largest of the non-Nilotic groups of southern Sudanese tribes. The town of Raga or Raja, from which the claimant comes, is the centre of one of the largest Kreish communities. The Kreish include Muslims and Christians and many of them are described as relatively well educated. There is a Kreish community living in Khartoum.

8. The situation which would face the claimant if he were to be returned to Sudan would be that he would be obviously southern Sudanese by his appearance and he would obviously have been away from the country for a long time.

9. We will deal with the second point first for it raises an issue as to the existence or the validity of a decree numbered 4/B/307 which, it is asserted, would put this claimant and many others at risk were he to return to Sudan.

10. We have before us copies of the decree and also material which comments upon it. The decree is dated 28 February 1993 and is addressed to *"Heads of Frontiers Officers".* In English it reads,

> *"It is hereby decided to detain any Sudanese person returning from abroad who has left the Sudan after the Revolution of Salvation – and resided abroad for a period of one year or more. He is to be transferred to the headquarters of the Public Security Department for investigation and for carrying out the necessary security measures."*
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> It is signed by someone described as the Head of the Public Security Department.

11. By letter of 5 June 2002 addressed to the Deputy Head of Mission and Consul General of the British Embassy in Khartoum, an advocate, whose name is not given, informed the embassy that according to investigations which he had made there was no sign that such a decree existed and that if it had, it would have been superseded by the National Security Act 1999. The letter went on to say that there was a general feeling that the Government of Sudan was encouraging refugees to come home as this might work as good publicity for them abroad.

12. The Danish Immigration Service carried out a Fact Finding Mission in early 2000 which also concluded at paragraph B1.1 that the decree did not exist. The Fact Finding Mission found,

> *"In connection with the Danish Immigration Service's inquiry into the existence and application of a reported Sudanese Decree No. 4/B/307 on admission of Sudanese nationals into Sudan, the Netherlands Embassy in Cairo informed the Danish Embassy there in writing that there is no Decree or Regulation with the number 4/B/307 by means of a letter dated 13 January 2000. The letter also states that Sudanese nationals who have been abroad for more than one year do not have to report to the Security Service, police or any other investigative agency in Sudan for an interview. On the other hand, those who have been abroad for more than one year do have to report to the tax authorities in the Sudan on their return. This is because Sudanese nationals abroad are required to pay tax in*

Sudan for the period spent abroad. The tax is payable in foreign currency. If they fail to do so, they are guilty of tax evasion and will not be able to get an exit visa if they want to travel abroad again."

The report went on to say that according to a representative of the Sudan Human Rights Organisation in Cairo there was a decree requiring Sudanese nationals who have been abroad for a year to be detained but that was not supported by any evidence that people were being detained. What was pointed out was that the security police will frequently use their own initiative in deciding what the law is or what they propose to do.

13. A more recent Danish Fact Finding Report dated 8-9 August and 20-23 November 2001 dealt with this matter as well at paragraph 3.1

"Waltmans-Molier [Netherlands Embassy] was not aware of the existence of alleged Sudanese Decree called Decree No. 4B307 from the head of the General Security Apparatus to Senior Border Guards. However, she knew that it was the practice for Sudanese citizens who have been away from the country for a couple of years or more and who are now returning home to be questioned by the Sudanese Police on their arrival. Often this would be because of a failure to pay tax. The Netherlands Embassy was not aware of any examples of people suffering any harm while being questioned. Questioning was carried out by the Immigration Authorities or by the Security Service and was, according to Waltmans-Molier, quite normal. She mentioned the case in which a Sudanese women had been returned from the Netherlands to Khartoum. The woman claimed to be a member of an opposition party but could not give any account of its ideology and had been repeatedly questioned by the Security Service. The woman had complained to the Netherlands Embassy but the matter was not felt to be serious and the embassy had not heard that the woman had come to any harm....

A well informed local source in Cairo said that Sudanese citizens in possession of a valid national passport could enter Sudan without any difficulty. However, if they only had a temporary travel document they would be questioned about their circumstances on arrival in Sudan. This applied only to those returning voluntarily to Sudan. The source had no information about conditions on entry

for Sudanese citizens who had been forcibly repatriated to Sudan.

Arne Lehne said that Germany had never had problems with the deportation of rejected asylum applicants to Khartoum, either on entry or following entry. In the previous year a total of fifteen people had been sent back to Sudan from Germany. Only in some individual cases had the deportation been followed up."

The report goes on to mention that Sudanese citizens who are staying abroad and whose passports had expired could apply at the nearest Sudanese Embassy or to the passport issuing authorities in Khartoum for a new passport.

14. These materials have been supplemented by the CIPU Report which states at paragraph 6.86 that according to a letter the British Embassy in Khartoum was unaware of anything to suggest that returnees were regularly being detained by the internal security services. The Consul General was of the view that if such a policy existed it would have become apparent to him by the date of the letter, which was 10 June 2002.

15. Drawing the various threads together it seems to us that if this decree ever existed it is not in force. If it or its aims were being pursued with any sort of rigour at all we cannot envisage that the various embassies in Khartoum and Cairo would be holding the views that they do about what is actually happening to returnees to Sudan.

16. 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 risk of Article 3 harm.

17. 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.

18. Further, and of more specific relevance to this particular case, we are not aware of material that shows that as a member of the Kreish Tribe this claimant would be any more likely to be in difficulties on return than any other obvious southern Sudanese with no political profile.

19. In short, we consider that there is no evidence to show that the claimant would be at real risk upon return to Sudan.

20. The next question to consider is whether, having returned, he will be at risk of Article 3 harm because of the conditions he would face thereafter. On this point we are very grateful to the representatives of the claimant who provided us at our request with the Norwegian Refugee Council's profile of internal displacement on Sudan dated 19 May 2004 which contains a very large amount of material relating to the position of displaced persons in Sudan gathered over the last two or three years. This report is the foundation for much of the material in the CIPU Report paragraphs 6.276 to 6.288 on internally displaced persons in Sudan.

21. The position in the claimant's home area of Raga was very fraught until 2002, according to the report. The SPLA captured Raga from the Sudan Government in about June 2001 and the town was recaptured in October of that year. Between April and May 2002 about 19,500 internally displaced persons were repatriated back to Raga, according to the UNHCR reporting on 25 July 2003. (Page 60 Norwegian Report). It seems that from about the date of the recapture security in the Raga area and in Bahr el-Ghazal as a whole was felt to have improved and several thousands were making the journey from Khartoum back to their homes there. Indeed by July 2003, 29,400 registered returnees had arrived back in Raga.

22. It seems to us that the position at present, which certainly appears to be no worse than it was in July 2003, is such that the claimant could safely make the journey from Khartoum back to his home area. We cannot see from the Norwegian material that it would be dangerous for him to do so in the sense of exposing him to a real risk of Article 3 harm. Nor can we see that for him to be in his home area would expose him to such risk, because for a period of now nearly two years his home area has been under government control and people have been going back in significant numbers.

23. If the position in his home area were considered unsafe, and we are not of the view that it is, 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, is 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 (see Norwegian Report pages 105 to 108 and 134 to 136).

24. We do not consider that the existence of a Kreish community in Khartoum is itself likely to be of much assistance to the claimant because that community must already have been overwhelmed with requests for assistance from displaced Kreish coming from the south.

25. In light of all the material that has helpfully been provided for us we have come to the conclusions,

    a) that the claimant could return to Khartoum without being at any real risk of being persecuted or subjected to Article 3 harm by the authorities on return;

    b) that the claimant could go back to his home area without being at real risk of harm in doing so; and

    c) that in any even,t even if he stayed in Khartoum, the claimant, whilst suffering difficulties and deprivations would not be placed at risk of Article 3 harm by being put in one of the camps for internally displaced persons whilst he waited to return to his home area.

26. For all these reasons we consider that this appeal should be dismissed.