



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

Appeal Number: PA/07705/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 31<sup>st</sup> August 2017**

**Decision & Reasons  
Promulgated**

**On 19<sup>th</sup> September 2017**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**A M (SUDAN)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Bandegani, Counsel, instructed by Birnberg Peirce&Partners

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

**DECISION AND REASONS**

1. The appellant is a citizen of Sudan born in 1972. He entered the United Kingdom in February 2000 concealed in a lorry and claimed asylum. That

claim was refused in May 2004. An appeal against that decision was dismissed on 8<sup>th</sup> September 2004.

2. Between May 2006 and 6<sup>th</sup> June 2011 the applicant was convicted on six separate occasions of a total of eleven offences. On 6<sup>th</sup> June 2011 he was convicted at Isleworth Crown Court of possessing a false document and sentenced to six months' imprisonment. On 8<sup>th</sup> December 2015 he was convicted at the Central London Magistrates' Court of making false representations.
3. On 13<sup>th</sup> July 2016 the respondent made a decision to deport the appellant and refused his protection and human rights claim. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Russell on 12<sup>th</sup> April 2017.
4. In a determination promulgated on 21<sup>st</sup> April 2017, the appeal was dismissed under the Immigration Rules and on human rights and protection grounds.
5. The appellant sought to challenge that decision and permission to do so was granted to the Upper Tribunal on the basis of lack of consideration as to internal relocation and the reasonableness thereof. Thus the matter comes before me to determine that issue.
6. It is to be noted that the grounds of appeal against the decision focus, not so much upon the merits of deportation, but upon the circumstances of the appellant's return to Sudan. It is said generally that the criticisms made by the First-tier Tribunal Judge of the expert report of Peter Verney was unjustified. Secondly it was said that there were inadequate findings made on the issue of generalised violence and in particular the risk of detention. Third it was said that there was inadequate consideration of the reasonableness as to relocation, particularly given the appellant's mental difficulties. At the outset it was recognised that the appellant was of the Nuba tribe and originally came from southern Kordofan. It was accepted by all parties that the situation in southern Kordofan was one of dire humanitarian need in the context of a prolonged conflict between the government of Sudan and SPLM-N. The situation had provoked the displacement of many people who now live in areas around Khartoum. It was clearly accepted that the appellant could not return to that area. The issue was essentially whether he could return to Khartoum as have many other displaced persons from southern Kordofan.
7. The Judge properly considered the most recent case of the Upper Tribunal in **IM and AI (risks - membership of the Bjebeja tribe, BJ Congress and JEM) (Sudan) CG [2016] UKUT 00188 (IAC)** which sets out categories of risk of those who could or could not safely return. The case states generally that, other than activists, there does not seem to be a particular risk for people from southern Kordofan or Nuba outside the two areas and there does not seem to be a risk for such people arriving at the

airport in Khartoum or for people who have been outside of Sudan for a long time. As the case of **IM and AI** makes clear, the decision maker must build up as comprehensive a picture as possible of the claimant taking into account all relevant material including that which may not have been established even to the lower standard of proof. Once a composite assessment of the evidence has been made, it will be for the decision maker to determine whether there is a real risk that the claim will come to the attention of the authorities on return in such a way as amounts to more than routine common place detention that meets the threshold of real risk of serious harm.

8. It was the finding of the Judge, at paragraph 39 of the determination, that the appellant did not have a profile as an activist, either in Sudan or in the UK. The information about his activities in Sudan was limited (and was disbelieved in the previous hearing) and in any event would have occurred 17 years ago, since when he has not undertaken any political activities. The Judge concludes that he would return to Khartoum as a Nuba travelling on a temporary document after having spent a long time outside of Sudan. The background evidence does not suggest that this puts the appellant at risk.
9. It is not suggested otherwise that the profile is as has been found.
10. Contrary to the generality of the conclusions in **IM and AI**, Peter Verney in his report seeks to suggest that there was a risk on account of his Nuba ethnic origin. His conclusions of his report were summarised at pages 45 and 46 of the report which he prepared dated 30<sup>th</sup> March 2017.
11. He expresses his view as to the credibility of the account and concludes that non-Arabs of Nuba ethnic origin are automatically likely to be suspected and accused of siding with the rebel opposition. He contends that rebel political sympathies will be imputed to him automatically by reason of his ethnic identity.
12. The Judge made a number of criticisms of that report, not least that the issue of credibility is for the Judge not the expert and that the report lacks objectivity. It seems to me that the comments were generally well-founded, notwithstanding the arguments submitted by Mr Bandegani to the contrary. Indeed the conclusion made by the expert runs contrary to the conclusions as set out by the Upper Tribunal in the country guidance decision.
13. It is said that proper account should be given to the expertise of Mr Verney, particularly as to his assistance to the Tribunal in many cases. In that connection it is to be noted that in **IM and AI**, at paragraph 249 of that decision, the Tribunal expressly rejects the approach adopted by Mr Verney in his two reports and, for the reasons given in the appendix, his report does not form part of the country guidance. Indeed Mr Verney gave evidence at the earlier decision of **HGMO (relocation to Khartoum)**

**Sudan CG [2006] UKIAT 00062** promulgated in August 2016. The Tribunal again, having heard his evidence, gave it little weight for the reasons as set out in paragraphs 163 and 164 of that decision, particularly noting a tendency to exaggerate or make assertions beyond the evidence cited in support. In particular, and very relevant to this matter, they rejected his claim that ethnicity was linked automatically to suspicion of sympathy with the rebels. It seems to me that the Judge was entitled to give that report little weight and to prefer the country guidance case.

14. Clearly a focus of concern to those returning to Khartoum will be the events at the airport. It will be inevitable that there would be some questioning, if not a period of detention at the airport, to enable the authorities to clarify the nature of the person who was returning. The Judge does, as can be seen at paragraph 44 of the determination, factor in significantly the fact that the appellant has mental health difficulties, raising the question as to whether that would cause him to be unable to function properly in stressful situations. It is also noted that on the medical evidence the appellant was no longer suffering from PTSD although there were still medical concerns about his general mental health.
15. As the country guidance case makes clear that there is a likely to be wide response by the authorities to those who return. There will be those who have names on a particular wanted list, who no doubt will be subjected to detailed questioning and possibly serious detention. On the other hand there are those who have no profile and little significance after questioning. It is entirely understandable, given the lack of profile of the appellant, that the Judge is entitled to consider that the detention would be of short duration and that there would be nothing untoward that stems from it so far as any hardship or risk to the appellant. The Judge has done what is required namely to factor in the mental health as to whether that would create any problem to the appellant in questioning and the Judge has properly come to the conclusion that it would not.
16. I find that the Judge has properly followed the guidance as set out in **IM and AI**. There has been a careful consideration of profile together with risk at the airport and in detention.
17. The further challenge, which is not entirely articulated in the grounds of appeal but relied upon by Mr Bandegani, is that there was no proper consideration by the Judge as to the reasonableness of relocation, as required in the leading case of **Januzi [2006] UKHL 5**. It is contended that the appellant is a vulnerable person because of the mental illness and will find it difficult to cope in the situation in or around Khartoum with many other displaced persons. It is contended that there has been no proper analysis by the Judge of that matter. Rather the focus has been on whether Article 3 is engaged rather than upon the reasonableness of relocation. Put another way it is a question of whether it would be unduly harsh for an individual to live in a particular area, for example living in

conditions in the safe haven may be attendant with dangers or vicissitudes which pose a threat which is as great or greater than the risk of persecution in the place of habitual residence. Where the safe haven is not a viable or realistic alternative to the place where persecution is feared, it cannot properly be said that relocation is a reasonable or viable option. The court in **Januzi** looked at various aspects such as economic survival, ability to sustain life at a reasonable subsistence level or where a person will be denied access to land, resources or protection. That issue was considered with considerable care by the Upper Tribunal in **HGMO (relocation to Khartoum) Sudan CG [2006] UKAIT 0062**. The Upper Tribunal looked very much at the conditions of those returning to the area of Khartoum. It noted at paragraph 228 where the conclusions were as follows:

“However, even if returnees of Darfuri origin have to be considered on the basis that they will be left with no alternative but to live in IDP camps or squatter settlements, we still do not consider that in the general run of cases the conditions they would face give rise to either persecutory harm, ill-treatment contrary to Article 3 or to undue hardship within the context of a claim for international protection under the Refugee Convention.”

18. The Tribunal went on to consider conditions for IDPs in the Khartoum State and life in squatter camps and IDP camps. The facilities were also considered in paragraph 254. The Tribunal was very much aware of the factors set out in **Januzi**, but in general terms came to the conclusion that notwithstanding the privations of and difficulties of life in or around Khartoum it would not engage Article 3 nor did it constitute such harshness being the test under **Januzi**. There is nothing to indicate that that decision has been superseded by the other decision, indeed the Tribunal in **IM and AI** makes particular reference to **HGMO**. It does not seem to me, therefore, that it is incumbent upon the Judge to embark upon a detailed the examination of life conditions facing the appellant, once passed the airport and in or around Khartoum, or to determine whether that meets the reasonableness test, when that matter has been determined essentially in a country guidance decision.
19. Indeed it is relevant to note that the documents presented at the hearing by the respondent included the report on Sudan, situation of persons from Darfur, southern Kordofan and Blue Nile in Khartoum, a joint report of the Danish Immigration Service and the UK Home Office Fact-Finding Missions to Khartoum conducted in February to March 2016. It was a report dated August 2016 and it deals particularly in Section 4 with living conditions in Khartoum for persons from Darfur and the two areas. It deals with access to documentation, access to housing accommodation. In that case it is noted there is no systemic discrimination against persons from Darfur of the two areas with regard to where such communities could live in Khartoum. It recognised generally that those with limited means lived in the poorer communities on the outskirts of the city. Access to education

and healthcare and to humanitarian assistance were also highlighted and in particular, in the slum areas of Greater Khartoum ,there were social committees supporting local communities with regard to services. The IDP camps were also noted as was as access to the employment. There is nothing to indicate in that report that circumstances had in any sense deteriorated from those considered in 2006 by **HGMO**. The Judge was entitled to rely upon the country guidance generally as to the reasonableness of return.

20. What was of course of importance for the Judge to determine was, whether or not the mental condition of the appellant would be such as to create particular risks or difficulties for the appellant, and particularly the risk of suicide and self-harm. The Judge does engage in some detail with that aspect together with the question of suicide risk. Significantly the grounds do not seem to challenge that approach in particular. Although the grounds seek to challenge the reasonableness of return they do not specify any detail what factors would militate against that return other than those that have been considered already by the Tribunal in **HGMO**. Significantly indeed at paragraph 51 of the determination the Judge noted **KH (Afghanistan) v SSHD [2009] EWCA Civ 1354**. Mr Tufan submits that that is a relevant authority for consideration.,having regard to the remarks of that court it set out in paragraph 33 which reads as follows:

“The truth is the presence of mental illness among failed asylum seekers cannot really be regarded as exceptional. Sadly even asylum seekers with mental illness who have no families can hardly be regarded as ‘very exceptional’. If this case is to be regarded as a very exceptional one, there will inevitably be cases which will be indistinguishable. A person with no family would have to be equated with a person who has a family but whose members are unwilling or unable to look after him or her. I cannot think that Baroness Hale had such a wide category in mind. In order for a case to be “very exceptional” it would have to be exceptional inside the class of person with mental illness without family support. Perhaps a very old or very young person would qualify but hardly an ordinary adult.”

21. As was submitted by Mr Bandegani, this of course is a decision made within the context of Article 3 rather than with reasonableness of return. There is a recognition that mental illness sadly is not uncommon among those being returned. The Judge was entirely right at paragraph 51 to bear in mind that.
22. I find that the Judge rightly concentrated upon the issue of suicide and how the mental condition can be managed. The Judge has clearly had regard to the report of Dr Maloney. Mr Bandegani submits that the Judge has pitched the matter too high by simply considering Article 3 of the ECHR. It was indicated by Dr Maloney that return to Sudan could worsen the features of his mental state, making it unlikely to engage in treatment or social interaction. Significantly, however, in the conclusions at 9.7 of

the report, Dr Maloney has little detail as to the current state of his illness or the likely treatments required for the future. It is to be noted that the Judge, at paragraph 52 of the determination, engages with comments of Dr Maloney and does not find that the appellant would be at risk of ill-treatment or returning to disintegrating society. Mr Maloney does not identify any particular course of treatment that is required. In any event it is to be noted, from the bundle of documents that was presented at the hearing, there was a document dealing with Mental Health treatment in Sudan at page 173 of the bundle. It is to be noted at page 174 in particular, that the only two mental health hospitals in Sudan catering to the generalised population are in Khartoum. There are also community based psychiatric units offering 760 beds for inpatients. Although there are clearly limitations in terms of mental health treatment it is clear through the report that the area of Khartoum is perhaps best served than others for these purposes.

23. In all the circumstances I find that the Judge has properly dealt with the issues as to relocation to Khartoum. In those circumstances the appeal against the Judge's decision is dismissed.

### **Notice of Decision**

The appellant's appeal against the First-tier Tribunal's decision is dismissed such that the decision shall stand, namely that the appellant's appeal against deportation is dismissed as is that in relation to asylum and human rights and other humanitarian protection.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed 

Date 18 September 2017

Upper Tribunal Judge King TD

