



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12375/2017

THE IMMIGRATION ACTS

Heard at Newport
On 23 August 2018

Decision & Reasons Promulgated
On 5 September 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MONEERA ABDELRAHMAN YAGOUB IDRIS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Dean, Solicitor

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Lever, promulgated on 7 March 2018, dismissing her appeal against the decision of the respondent to refuse her further leave to remain and to refuse her human rights claim.
2. The appellant entered the United Kingdom with leave to enter as a spouse on 21 January 2015. On 14 August 2017 she made an application to extend her leave in that capacity which was refused by the respondent on 9 October 2017. The reasons given were:-

- (i) that the appellant did not meet the financial requirements; and
- (ii) did not meet the English language requirements.

The respondent concluded also that there were no exceptional circumstances justifying her remaining in the United Kingdom.

3. On appeal, the judge heard evidence from the appellant and her husband noting that the husband had entered the United Kingdom in 2004 and claimed asylum; that his asylum claim had been refused initially in 2005 and again after it had been remitted by the Upper Tribunal to the First-tier Tribunal. He put in a fresh asylum claim which had not been considered but he had then been given leave to remain and he subsequently obtained British citizenship in 2012. The judge noted also that the appellant said that he was from Darfur. The judge concluded that there were no exceptional circumstances in this case noting that he had no file relating to the husband or had any copies of any decisions that had been made about his case, inferring that the appellant had been granted leave under the legacy programme [14]; that his appeal had been dismissed twice thereby indicating that there was no real risk of persecution for him in Sudan and that there was no further evidence to demonstrate the circumstances had changed such that he would be at risk on his return to Sudan.
4. The judge concluded that the appellant could return to Sudan to make an application to return and her separation need not be lengthy. He concluded that the husband could return to Sudan with his wife and that the requirements of EX1 of the Immigration Rules were not met.
5. The appellant sought permission to appeal on the grounds that the appellant is of the Zaghawa tribe from Darfur and as such in light of the country guidance in **AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056** he was at risk of persecution in Darfur and could not be expected to relocate in Sudan, that guidance being most recently upheld in **MM (Darfuris) Sudan CG [2015] UKUT 00010**; on that basis he would still be at risk in Sudan now and thus the judge has made a perverse and irrational finding that there would not be any risk to the appellant's husband on returning to Sudan; that this was put to the judge in submissions as was the fact that the country guidance in respect of non-Arab Darfuris had changed between the earlier decision **HGMO** in 2006 and the position in 2009 which postdated the husband's appeal.
6. Contrary to what is averred it was not perverse and irrational for the judge to have concluded that the appellant's husband had not shown that he was at risk in Sudan. As Miss Dean accepted, there were not and are still not available to the appellant or her husband copies of the determinations in either of his appeals setting out whether the appellant's husband had asserted that he was a non-Arab of Darfuri origin or whether that had been accepted either by a Tribunal or the Secretary of State. No refusal letters are available either. The fact that his birthplace is shown on his passport as being in Darfur is not determinative given that not all those born in Darfur are of non-Arab origin.

7. In the circumstances of this case and given the history of the appellant's husband's engagement with the Home Office and the Tribunals, the judge was entitled not to accept the bare assertion by the appellant's husband that he was of non-Arab origin. Accordingly, it cannot be said that the judge acted irrationally in therefore concluding that there was no reason why the husband could not return if only temporarily to Sudan and in the circumstances, the decision did not involve the making of any error of law.
8. I do, however, note Miss Dean's concern that the Secretary of State has yet to reply to a Subject Access Disclosure made in respect of the husband which one would have hoped would shed some light on his position. It also appears that the initial application which gave rise to the appeal was not properly made to the Secretary of State in terms that this relevant information about the husband's origin was not put forward. That, however, is not the fault of the appellant's current solicitors.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

No anonymity direction is made.

Signed

Date 28 August 2018



Upper Tribunal Judge Rintoul