



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

Appeal Number: PA/01183/2018

THE IMMIGRATION ACTS

Heard at Glasgow

On 25th October 2018

**Decision and Reasons
Promulgated**

On 29th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

REEM [Y]

(No anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms X Vengoechea, Advocate, instructed by Maguire, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Mulholland dismissing an appeal on protection and human rights grounds.
2. The appellant is a member of the Berti tribe. She claims she was targeted by the Sudanese authorities because when she and her husband were living in Qatar they raised charitable donations to

send to poor families in Sudan. She maintains also that her children are at risk of being subjected to FGM in Sudan. This was inflicted on her as a child.

3. The Judge of the First-tier Tribunal made an adverse credibility finding on the appellant's evidence. The judge did not accept that the appellant had come to the adverse attention of the authorities in Sudan or that she had been detained there as she claimed. The judge did not believe the appellant's evidence that her husband had been detained and was missing, or that her brother was missing. The judge did not accept that the appellant's children were at risk of FGM being carried out against the wishes of the appellant and her husband.
4. Permission to appeal was granted on two main grounds. The first of these was that the judge had arguably not given adequate reasons for departing from the country guideline decisions on the risk to non-Arab Darfuris, such as the appellant, in Sudan. The second was that the judge had arguably not given adequate reasons for finding that the appellant and her husband would be able to resist family pressure to subject their daughters to FGM, particularly as the eldest was nearing the age of seven and FGM was widely practised in Sudan on girls between the ages of 6 and 12.

Submissions

5. Mr Govan argued strongly for the respondent that the First-tier Tribunal's decision should be allowed to stand. The Judge of the First-tier Tribunal was entitled to depart from the country guideline cases provided adequate reasons for this were given. Even if in so doing the judge had neglected to consider an expert's report obtained on behalf of the appellant, it was unlikely her decision would have been different. The situation in Sudan had altered since the country guideline decisions were made and this was reflected in the background evidence and in Home Office policy. This was based on a variety of sources including international organisations. Non-Arab Darfuris were not generally at risk of persecution in Khartoum. The appellant had lived in Qatar and in connection with her application had given an address in Omdurman, which was adjacent to Khartoum. There was a sizeable population of up to one million Darfuris in Khartoum. Many of those who had gone there as IDPs were no longer recognised as such.
6. Mr Govan referred also to the credibility issues in the appeal. The judge rejected evidence contained in a letter from the appellant's mother stating she did not know the whereabouts of the appellant's husband. On the risk of FGM the judge had given sound reasons at paragraphs 54-58 of the decision. The appellant and her husband were opposed to FGM.

7. Ms Vengoechea referred me to Practice Direction 12 on the authority of country guideline decisions and the circumstances in which a tribunal may depart from these. The reasons given by the judge of the First-tier Tribunal for departing from the county guideline decisions of AA (Non-Arab Darfuris: relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 are given in no more than two paragraphs, numbered 22 and 23. At paragraph 22 the judge refers to the Home office CPIN Note of August 2017 entitled “Sudan: Non-Arab Darfuris” and very briefly mentions some of its sources and conclusions. She points out that this note is more recent than the 2009 decision in AA, which was based at least in part on a Home Office Note of that year.

Discussion

8. At paragraph 23 the judge refers to the more recent country guideline decision of MM, relied upon by the appellant, and comments that the appellant has not sought to challenge the information in the August 2017 CPIN. It should be pointed out, however, that it is for the party challenging the county guideline decision to provide evidence and reasons showing why it should not be followed. The judge nevertheless concludes at paragraph 23 that the August 2017 CPIN Note is based on credible and reliable sources and contains the most up-to-date and reliable information. It shows that there has been a material change of circumstances since the country guideline cases of AA and MM were decided and that the appellant and her children were no longer at risk solely on account of their ethnicity.
9. To say the judge’s reasoning for departing from the country guideline cases is inadequate might be regarded as something of an understatement. Part of the purpose of having a system of country guidance in reported decisions of the Upper Tribunal is to maintain consistency in the numerous tribunal decisions which are made about conditions in a particular country so that individual judges will not adopt divergent views. The importance of treating like cases in a like manner is stated in Practice Direction 12.
10. The passage of time since a country guideline decision was made may mean that the decision should no longer be followed because circumstances have changed. This is not, however, a conclusion to be reached lightly and without detailed analysis and assessment. As was observed in SG (Iraq) [2012] EWCA Civ 940, strong grounds supported by cogent evidence are required to justify departure from a country guideline decision. Evidence from some sources may point to a material change of circumstances but there may be other sources suggesting a less pronounced change or referring to different factors which may affect the assessment of risk.

11. On the issue of sources, in considering whether the country guideline cases should be followed the judge did not have any regard to the view of the expert report provided for the appellant by Dr Bekalo. Mr Govan suggested that the terms of this report, so far as it addressed the position of Darfuris in the Khartoum area, would have been unlikely to have affected the judge's position. If the judge was carrying out a review of the country guideline decisions with the requisite thoroughness, however, this evidence should have been taken into account. For example, while at paragraph 2.5 Dr Bekalo describes the appellant as a member of a rare well-to-do Berti family, at paragraph 4.4 he refers to continuing problems in Khartoum. While Dr Bekalo's report may be less comprehensive and rely on fewer sources than the Home Office CPIN, it is still of some significance.
12. I am not satisfied that the judge of the First-tier Tribunal gave adequate reasons for not following the country guideline decisions on the risk to non-Arab Darfuris. This amounts to an error of law because of which the decision should be set aside.
13. The second aspect of the appellant's case was the risk of FGM being inflicted on her daughters. It seems to me that if the Judge of the First-tier Tribunal had followed the country guideline decisions on the risk of persecution, she might well have reached a different conclusion on the ability of the children's parents to protect them from FGM. At paragraph 57 of her decision the judge indicated there was not enough evidence to satisfy her that FGM would "inevitably" be carried out against the parents' wishes. Mr Govan suggested that the word "inevitably" was first used in paragraph 56 in relation to the opinion expressed by Dr Bekalo. Ms Vengoechea pointed out in turn that Dr Bekalo did not use the word "inevitably" in his report. It was the judge who introduced this word into her decision.
14. The question of whether FGM would "inevitably" be carried out against the parents' wishes bears no relation to the low standard of proof when assessing risk in a protection appeal. The use of the term indicates that the judge erred in law by applying too high standard of proof. This is a further reason for setting aside the decision.
15. In re-making the decision I have followed the country guideline decisions, particularly the more recent decision of MM from 2015. I am aware of Mr Govan's reliance on the 2017 CPIN as tending to show a materially lower risk to Darfuris living around Khartoum than was previously accepted. Mr Govan indicated that a further country guideline case would be heard around February 2019. I recognise that this will provide an appropriate occasion for all the relevant country information to be scrutinised and assessed.

Meanwhile the present appeal should be decided on the basis of the appellant's particular circumstances in accordance with the existing country guidance.

16. The Judge of the First-tier Tribunal made a number of findings adverse to the appellant. These primary findings upon the evidence still stand although the judge's inferences and conclusions do not. Crucially it is accepted that the appellant belongs to a non-Arab Darfuri tribe.
17. Ms Vengoechea suggested that even if the appellant was not at risk by reason of her ethnicity, there was also the issue of FGM. In Sudan there would be pressure for her daughters, particularly the oldest, to be subjected to FGM. The judge considered that the parents would be able to resist this pressure. This finding appeared to be based to a significant extent on the assumption that the appellant and her partner would be able to support one another. The judge specifically disbelieved written evidence from the appellant's mother stating that she did not know where the appellant's husband was. There was, however, no positive finding as to where the appellant's husband was or what his current circumstances might be. The appellant has come to the UK without her husband. The couple have been living apart since she came here and it ought not to be assumed they will resume living together if the appellant returns to Sudan.
18. The position is therefore that the appellant would be returning to Sudan as a non-Arab Darfuri woman on her own apart from her three young daughters. There would be a real risk of persecution or serious harm to the appellant and to her daughters both by way of persecution on grounds of ethnicity and by way of FGM being inflicted on her daughters. The appeal will succeed on protection grounds.

Conclusions

19. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
20. The decision is set aside.
21. The decision is re-made allowing the appeal.

Anonymity

The Judge of the First-tier Tribunal made an anonymity direction but I have not been asked to continue this and I see no reason of substance for doing so.

Fee award (N.B. this is not part of the decision)
No fee has been paid or is payable so no fee award is made.

M E Deans
31st October 2018
Deputy Upper Tribunal Judge