



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04710/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 26 November 2018

Decision & Reasons Promulgated
On 27 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR HAA
(ANONYMITY DIRECTION MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Nicholson, counsel instructed by GMIAU

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION & REASONS

1. The appeal came before the Upper Tribunal for a decision on whether or not the decision of the First tier Tribunal contained any material errors of law on 5 September 2018. In a decision and reasons promulgated on 18 September 2018, I found material errors of law and adjourned the appeal for a resumed hearing in order to determine whether, it having been accepted that the Appellant is a non-Arab Darfuri, it would be unduly harsh to expect him to relocate within Sudan. A copy of that decision and reasons is appended.

2. The appeal came before the Upper Tribunal for the resumed hearing on 26 November 2018, when Mr McVeety indicated that he did not wish to cross-examine the Appellant thus the appeal proceeded on the basis of submissions only. Mr McVeety submitted that the main issue is clearly the Appellant's ethnicity. He acknowledged that the Appellant had raised the issue of previous arrest and detention by the authorities and sought to rely on the decision in *Devaseelan* [2002] UKAIT 00702 in respect of the issue of whether the Appellant had been arrested for political reasons.

3. Mr McVeety submitted that what caused FtTJ Walker to depart from the previous finding was the evidence of the witnesses but they did not engage with any political activity but focused on the evidence of his ethnicity. He sought to rely on the up to date Country Policy Information Note [CPIN], September 2018. In respect of internal relocation or return to Khartoum, he submitted that the Appellant's last address is in Khartoum although he has a family home in Darfur. Mr McVeety acknowledged that Darfur is still problematic so the issue is return to Khartoum and he sought to rely specifically on the following provisions:

"5.1.1: There are no recent and reliable census data available for the ethnic composition of the population of Sudan in general or Khartoum in particular. However, the CIA Factbook estimated that the country's main ethnic groups are 'Sudanese Arab (approximately 70%), Fur, Beja, Nuba, Fallata'.

...

5.1.4: Janes noted that Khartoum's population included '2 million displaced persons from the southern war zone as well as western and eastern drought affected areas.' According to Sudan government figures, released in April 2010, cited in an Overseas Development Institute (ODI) paper, there were over 600,000 IDPs in Khartoum. This was in addition to over 1.5 million 'integrated' IDPs in the city - 59% of whom were from Abyei, Southern Kordofan and Blue Nile, with the remaining 41% were from other parts of the country. While the percentage of the city's population who were IDPs was estimated in 2008 by another source cited in the ODI paper to be between 18-23% (around 1 to 1.5 million) of the total.

5.1.5: During the joint UK-DIS FFM of February - March 2016, the FFM team were provided with estimates of the Darfuri population in Khartoum by a range of sources:

'Sources consistently observed that there was a lack of empirical data to verify the actual number of persons from Darfur and the Two Areas residing in Khartoum, whilst the figures referred to by sources ranged widely.

'However, several sources referred to very sizeable populations from Darfur and the Two Areas residing in Khartoum, either in the actual numbers mentioned, or in the description given. For example Freedom House mentioned "sizeable populations of Darfuris residing [in Khartoum] ..."; the regional NGO advised that the number was 'substantial and increasing' with "sizeable" Darfuri populations, whilst

the diplomatic source referred to persons from Darfur and the Two Areas as constituting a 'big community' in Khartoum. Other sources made similar statements.

'A couple of sources provided estimates of the size of populations from Darfur and Two Areas living in Khartoum, ranging from hundreds of thousands and up to a million or greater. The highest figures estimated was five million. Two sources referred to the size of these communities as 60 or 70 per cent of the total population of Khartoum.

'Sources provided limited information on specific tribal representations or numbers in Khartoum. The civil society NGO referred to one million from the Fur tribe living in Greater Khartoum... whilst the international consultant noted that one could find Darfuris from all tribes living in Khartoum, although no reference was made to numbers or size.'

- 5.1.6: The British Embassy in Khartoum noted that many Darfuris, including non-Arabs, are represented at a senior level in the government, academia, the security forces, the media and in other institutions. The human rights activist, Abdelrahman Elgasim, contacted by the Belgian authorities in early 2018, stated that a number of Darfuris hold senior positions in the Sudanese government but most are members of the Islamic Movement; and, the majority are tied through their religion to the Islamic government'. The Darfur Students' Association estimated that in 2016 there were 18,000 students from Darfur enrolled in universities in Khartoum, with Darfur students representing an estimated 7% (26,000) of the country's total student population of 360,000.

...

- 5.2.3: The ODI paper of 2011 on settlement patterns in Khartoum observed:
'Khartoum can sometimes appear to have a split personality. Strict Islamic behavioural codes and the veneer of control that the city exudes mean that Khartoum is often touted as one of the safest capitals in Africa. Yet beyond the inner city is another, hidden world of frustration, desperation, poverty and crime...

'Settlement patterns in Khartoum have long been influenced by political, economic and tribal or family factors'

...

- 5.2.6: The same submission reported without specifying whether the observations applied to Sudan generally or Khartoum in particular:
'[Amnesty International] AI noted widespread suppression of non-Muslim and Muslim minority groups [...]
'JS2 reported that the Indigenous People Economic, Social and Cultural rights were violated with denied access to trade markets. Shops in town centres allocated to particular groups are intentionally denied to the indigenous population. They recommended Sudan to protect ethnic and

religious minorities, apply equal citizenship rights and prosecute perpetrators of these fundamental rights violations.'

...

5.2.8: The USSD human rights report for 2016 observed: 'The Muslim majority government continued to discriminate against ethnic and some religious minorities in almost every aspect of society. Citizens in Arabic-speaking areas who did not speak Arabic experienced discrimination in education, employment, and other areas'. The USSD human rights report for 2017 did not note this.

5.2.9: The USSD 2017 report noted:

'In September, NCP-aligned students killed three Darfuri students on the campus of Omdurman Islamic University in Khartoum. The authorities did not make public any investigation into the killings. Credible reports stated that throughout the country, some groups of NCP-aligned students were heavily armed and kept weapons, including Kalashnikovs and machetes, in mosques on campuses. There were credible reports of routine verbal and physical harassment by NCP-aligned students of Darfuri students...

'Government forces reportedly used live bullets to disperse crowds of protesting Darfuri students on multiple occasions, including at the University of Kordofan in Obeid in April and at Khartoum University and al-Zaeem al-Azhari University in May. Darfuri students also reported being attacked by NCP student-wing members during protests. There were no known repercussions for the NCP youth that participated in violence against Darfuri students. There were numerous reports of violence against student activists' family members...

'More than 10,000 women in the informal sector depended on selling tea on the streets of Khartoum State for their livelihoods after having fled conflict in Darfur and the Two Areas. Despite the collective activism of many tea sellers in Khartoum, harassment of tea sellers and confiscation of their belongings continued as in previous years.'

...

5.2.11: The DFAT report also considered that:

'... individuals from Darfur, including individuals from the Fur, Massalit and Zaghawa groups could safely relocate to Khartoum, pending individual circumstances (such as whether or not the individual was associated with the armed opposition). There are some examples of individuals from Darfur being targeted in Khartoum... DFAT further assesses that individuals in areas controlled by the armed opposition in Jebel Marra may face difficulty in relocating owing to ongoing conflict in this area.

'Livelihood challenges would likely hamper opportunities for internal relocation in Sudan. The informal nature of the economy (particularly outside of Khartoum), the significant reliance on humanitarian assistance

in conflict affected areas and reduction in informal and low-skilled employment opportunities due to the influx of refugees from neighbouring countries means that individuals would likely face economic hardship if relocating. In addition, the Government does not recognise internally displaced people in Khartoum, meaning that individuals relocating from conflict affected areas do not have access to humanitarian assistance in Khartoum.'

5.2.12. The UK-DIS FFM report, based on a range of sources, in the section on the reasons for displacement of persons including Darfuris to Khartoum noted that sources were consistent in identifying two main factors for relocation. One was the socio-economic situation in areas of origin and the relatively better circumstances in Khartoum, the other '... the improved security situation in Khartoum and dire conditions in Darfur and Two Areas. For example, the UN official remarked that Khartoum was a safe place for many Darfuris; Crisis Group noted that the security situation in Khartoum was much better than other places in Sudan, and that there had been an increasing "securitisation" of the capital in recent years with no major external security threats.'

5.2.13: The UK-DIS FFM report, based on a range of sources, also noted:

'Several sources referred to the NISS conducting surveillance of persons in Khartoum and having a network of informants, including within the Darfuri and Two Area communities, for example DBA (Khartoum) noted that the NISS had informants in the Darfuri student population who had informed the NISS about who was active in demonstrations. One source referred to the NISS' use of electronic surveillance, for example tapping phone calls or monitoring online social media.

'A majority of sources observed that those from Darfur or the Two Areas who were critical of the government and/or had a political profile may be monitored and targeted by the NISS in Khartoum. This could include many different forms of activism. 'Several sources identified student activists from Darfur and the Two Areas as being at risk of being targeted

'Several sources noted that security operations, including arrest and detention, by the government, including the NISS was not constant, but changed over time. Freedom House noted, for example, that the intensity of security operations could be seen to reflect the wider political climate with periods when the government would act in a fairly repressive way but during other times persons were able to express their views without serious reaction.

'Referring more generally to the issue of discrimination and restriction of political freedoms, Crisis Group noted that the discriminatory practices suffered by Darfuris and persons from the Two Areas, were systematic, but not constant, and that there may be periods where discriminatory practices were more intensely pursued and conversely times when discrimination was less pronounced... The SDFG [Sudan Democracy First Group] advised that it was difficult to say what was happening in

Khartoum today or the extent to which persons from Darfur or the Two Areas were targeted by the NISS now. According to the source, it was predominantly politically active persons who were targeted by the NISS.'

5.2.14: The UK-DIS FFM report, citing several sources, stated:

'Four sources observed that all communities from Darfur or the Two Areas in Khartoum could be at risk of mistreatment by the NISS or indicated that persons from these communities may be targeted by the authorities due to their ethnicity alone. However, none of the sources provided specific information indicating that persons from Darfur or the Two Areas were being subjected to mistreatment by the authorities exclusively due to their ethnic background.

'Faisal Elbagir (JHR [Journalists for Human Rights]) noted that whilst there was no official report on ordinary civilians (that is persons who were not involved in political activities) from Darfur or the Two Areas being targeted by the authorities merely due to their ethnic affiliation, such cases could be found on social media. However, the source could not give examples of such cases which had been verified. Elbagir also remarked that due to media restrictions in Sudan, it was often difficult to obtain accurate news reports about cases of detention.

'Khartoum based journalist (1) noted that it was the type and level of political activity rather than one's ethnic background which was the determining factor behind who was monitored and targeted by the NISS. ACPJS [African Centre for Justice and Peace Studies] explained that ethnicity was complicated and that ethnic disputes were often exploited by the government to pursue political goals. ACPJS highlighted that in general anyone who was suspected of political opposition against the government could be targeted, including persons from Arab tribes.

'Some sources advised with regard to the arrest of Darfuris in Khartoum that there had been no large scale arbitrary arrest of Darfuris in Khartoum in recent years compared to that of 2008, following the JEM assault on Omdurman. Sources noted that at that time widespread security operations in Khartoum took place, which were often based on the skin colour and ethnicity of a person.

'A number of sources, however, noted that those from Darfur and the Two Areas, and in particular those of African ethnicity, were more likely to be viewed with greater suspicion and treated worse in detention than other tribes from Darfur and the Two Areas if they did come to the attention of the NISS due to their political activity. Some sources also mentioned Ingessana from the Two Areas among the tribes being suspected by the authorities for political activity. Several sources noted that the Darfuri and the Two Area communities were perceived by the NISS to be 'rebel sympathisers' and consequently these communities would be more closely monitored by the NISS, for example through the use of informants. Khartoum based journalist (3) held the view that it was only those communities arriving in Khartoum post 2003 who would be monitored.

'DBA [Darfur Bar Association] (Kampala) and ACPJS observed that those from other Darfuri tribes (i.e. not the Fur, Masalit and Zaghawa), would not generally be perceived as opposed to the regime or commonly associated with rebel groups and hence not being monitored by the NISS. However DBA (Khartoum) noted, in the context of how persons from Darfur and the Two Areas were treated on arrest, that other African Darfuri tribes, including the Tunjur, Meidob, Tama, Mima, Gimir and Dago tribes, were treated more harshly than Arab-origin tribes because the authorities assumed that these groups supported armed rebel groups. DBA (Kampala) also observed that activists of Arab origin may experience harsh treatment for advocating in favour of the rights of non-Arab tribes.

'EHAHRDP [East and Horn of Africa Human Rights Defenders Project] commented that it was difficult to be prescriptive about which tribes would be at greater risk, although considered those from Arab Baggara tribes as less likely to experience mistreatment because these tribes were commonly associated with the pro-government Janjaweed militia.

'UNHCR noted, however, that it was difficult in practice to treat persons differently on the basis of their tribal affiliation. The source explained that it was difficult to say which group would be targeted and which would not due to the sheer number of different tribes in Darfur (over 400), and the fact that mixed parentage occurred.'

...

5.2.17: In September 2016, the British Embassy, Khartoum, observed that:

'The British Embassy is in regular contact with Darfuri groups from civil society, government and political parties. In the course of these contacts, no substantial concerns have been raised over the treatment of non-Arab Darfuris settled in regions outside of Darfur that we would consider ethnic persecution, although many face economic marginalisation having been displaced due to conflict. We are also not aware of reports of systematic targeting of Darfuris from United Nations agencies or other embassies with whom we are in contact.

'As found in the UK Home Office-Danish Immigration Service FFM report [of August 2016], we do receive reports of discrimination in education and employment. We also receive reports of harassment of individuals or groups perceived to have an anti-government political stance, such as Darfuri student associations. But these issues are not overriding for Darfuris as opposed to other ethnicities. Any individual with a perceived anti-government stance can face harassment.'

5.2.18: The Belgian Commissioner General for Refugees and Stateless persons undertook a comprehensive survey of available information on the treatment of returnees to Sudan at the end of 2017 / early 2018 from a wide range of sources, which included contacting a number of sources directly. The CGRS reported the following:

'The British Sudan researcher Peter Verney considers that non-Arab Darfuris may also be arrested and detained for racist motives, as part of the "genocidal" and "ethnocidal" destruction of their societies, and not because of actual evidence of links with rebel groups. The Sudanese authorities attribute a political colour on the basis of ethnicity, and not on the basis of a real political profile. According to Verney, hundreds of low profile non-Arab Darfuris are being arrested.

'In a document released in October 2017, Waging Peace stated that non-Arab Darfuris still are at risk in Sudan, also when they are sent back to Khartoum. According to Waging Peace, ethnic Darfuris (or persons supposed to belong to this ethnic group) face more systematic forms of discrimination and persecution in the capital, which prevents their relocation.

'In 2013, the British embassy in Khartoum was told by human rights organizations that returnees from Darfur and the Nuba Mountains run a higher risk of arrest upon arrival than other Sudanese returnees.

'Amnesty International considered that Sudanese from conflict-affected areas such as Darfur and South Kordofan and Blue Nile States should not be sent back to Sudan, where they would be at real risk of serious human rights violations. A number of sources contacted by the CGRS (Amnesty International; Sudan expert for an international organization; Sudanese journalist; DWAG; Tajeldin Adam; ACJPS; DRDC; KACE Sudan) hold the same view. Suliman Baldo declared that the Sudanese security services are more prone to subject detainees from conflict areas to racist insults and illtreatment, including torture, compared with detainees from north or central Sudan. Most youths leaving the country come from conflict areas, according to Baldo. Some sources (DWAG; DBA; human rights lawyer in Khartoum; ACJPS; DRDC) stated that the Fur, Massalit and Zaghawa are the ethnic groups which are most often targeted in Sudan. A Sudanese professor of human rights law stated that not every returnee faces problems at KIA but perceived a risk for persons who combine a specific ethnic background with political activities, for instance a Darfuri suspected of involvement with a rebel group.

'A number of sources contacted by the CGRS (Eric Reeves; Waging Peace; Sudanese human rights activist (A); Sudanese human rights activist in Khartoum (D)) were of the view that Darfuris are particularly under suspicion, all the more so, according to Tubiana, when they have requested asylum in the West or in Israel. Most sources also mentioned other Sub-Saharan ethnic groups such as the Nuba. Darfuris with "political profiles" (sometimes based on distant family ties with rebel groups or involvement in some form of political activity, according to Reeves) run a high risk of arrest, detention and torture. Waging Peace noted that many activities have a political side and that this could also be the case for the activities of journalists, teachers, human rights activists, humanitarian aid workers etc. Applying for asylum will also draw attention from the authorities, according to Waging Peace.

'Abdelrahman Elgasim (DBA) stated that passports of Darfuris are usually confiscated and their holders are interrogated about every aspect of their life (place of birth, ethnic origin, parents, brothers and sisters, partners, political affiliation, occupation) and have to sign a written commitment not to leave the country. They are then blacklisted from leaving the country. Elgasim is aware that a number of Darfuris occupy senior government functions but most of them are members of the Islamic Movement, and are tied through their religion to the Islamic government.

'Other sources stated that an ethnic profile entails in itself insufficient risk upon return and pleaded for a more individualized approach which would take into account the returnee's political profile [...]

'In May 2013, the Swiss Federal Administrative Court (FAC) considered that, although still unstable, the situation in Darfur was improving and that attacks against non-Arab Darfuris had decreased. The FAC concluded that Darfuris had to adduce additional distinguishing features, such as political or other affiliations, to substantiate their fear of persecution [...]

'The ACJPS told the CGRS it did not have any evidence suggesting that persons are targeted because of their ethnic background and stated that ethnicity is a complicated matter and that ethnic disputes are used by the government to achieve political goals.'"

4. In terms of the reasonableness of relocation, Mr McVeety drew attention to 6.1.1 and 6.1.2. and 6.3. in respect of access to housing, given that the Appellant had lived and worked in Khartoum. He submitted that, based on the Appellant's own evidence, there are clear improvements in the area. He further sought to rely on 8.1.1. in respect of the return of rejected asylum seekers to Darfur. He submitted that this was enough to go behind the country guidance case. He accept Peter Verney's report offers a critique and that the burden is on the Secretary of State to show sufficient change to justify departing from the country guidance.

5. Mr Nicholson served copies of the Appellant's asylum and screening interviews copies, which had not been included on the Respondent's bundle because there had been a judicial review. He submitted that Peter Verney's report is the most up to date evidence and that there had been no significant change since the last CPIN. He submitted that there was no reason for Peter Verney not to be an expert on the risk issue, given that his evidence as to the Appellant's language and ethnicity had been accepted. Mr Nicholson stated that he had compared the August 2017 CPIN to the current version but can't find any source information that is different. He sought to rely upon the following extracts at 2.4.9:

"The available evidence, therefore, does not establish that there has been significant or durable improvement in the situation in Darfur to depart from the caselaw of AA. Non-Arab Darfuris continue to face serious human rights violations in Darfur at the hands of various actors which are likely to amount to persecution or serious harm."

...

- 2.4.14. The Home Office did not therefore have sufficient information to determine if non-Arab Darfuris were generally at risk or not in Khartoum (see section 3.8 of Sudan OGN, November 2009). The guidance in AA therefore reflected the Home Office's own position based on a particular set of circumstances and a general lack of information about the human rights situation."

Mr Nicholson submitted that there was no source cited for this assertion, which relies on a report from 9 years ago.

- 2.4.15: "In the country guidance of [IM and AI \(Risks - membership of Beja Tribe, Beja Congress and JEM\) Sudan CG \[2016\] UKUT 00188 \(IAC\)](#), heard 28-29 July and 4 November 2015, and promulgated on 14 April 2016, the UT took a nuanced position on risks faced by particular groups. Although the UT did not specifically look at evidence on non-Arab Darfuris and did not remake [AA](#) and [MM](#), it did observe that the country evidence did not point to a generalised risk for specific groups. Rather, UT found that each case needs to be considered on its facts taking into account a person's individual circumstances, profile and activities:

'The problem that the evidence presents is that whilst the categories of those potentially at risk are legion, it is apparent that not all those falling into a particular category are at risk. It is not enough, therefore, to be a journalist or a student because not all members of these groups are at risk. So, too, with ethnic or tribal classification. Not all non-Arabs are at risk; nor all black Africans are at risk notwithstanding the unchallenged evidence that they are members of the various tribes associated with this group. Not all those from the troubled regions of Darfur, Southern Kordofan or the Blue Nile are at risk. Nor are all those who have been arrested and detained. However, all of these matters are factors that are relevant and some, of course, are much more likely to be significant, such as prior detention and ill-treatment as a result of involvement in activities perceived as being in opposition to the government. Yet, all of this material must be taken into account.' (para 203)

...

- 2.4.17: Sources - primarily information obtained by a joint Danish-UK fact finding mission of early 2016, an Australian government report of April 2016, and the Foreign and Commonwealth Office in a letter of September 2016 - indicate that Darfuris have been migrating to Khartoum for several decades and continue to do so because of a variety of reasons including insecurity and environmental degradation in Darfur. This includes people who have moved from Darfur since the conflict began in 2003. There is now, as a result, a large - probably high 100,000s - established population of different groups of Darfuris dispersed across Greater Khartoum (see [Migration](#) and [Khartoum Ethnic demography](#)).
- 2.4.18: Many Darfuris are socio-economically marginalised and face obstacles because of their origins in accessing public services, employment and ID documentation. However, there are Darfuris across all segments and

sectors of society, including government, academia (and as students with around 18,000 students in Khartoum), media and the security forces (see Khartoum, [Ethnic Demography](#)).

...

2.4.25 [3.1.3 in the previous report]: “The Home Office’s view is, therefore, that there is cogent evidence which has become available since the promulgation of [AA](#) and [MM](#) to depart from the caselaw’s assessment that all non-Arab Darfuris are likely to be at risk of persecution based on their ethnicity alone in Khartoum. Instead each case must be considered on its facts and the assessment of risk depending on a careful analysis of the person’s background, individual circumstances and experiences in Sudan, with the onus on the person to demonstrate that they may be at risk of persecution.”

6. Mr Nicholson submitted that it is necessary to look at the individual case. The Appellant had not been accepted as a political activist and was not a high profile established person, nor a student. He was born and lived in Darfur then moved to Khartoum, where he worked in the informal economy and returned to his village sporadically, was married there and his wife continues to live there and thus he commutes between the two.

7. He submitted that Peter Verney’s expertise and evidence is to be given a great deal of weight. There are five reports from Peter Verney, the most recent of which is in the supplementary bundle and is dated 30.8.18. At page 9, [4]-[19] he sets out his outline view of the country guidance and at [15] and [16] states that the Appellant would be recognised from his accent and physical appearance and he would be at risk of being stopped and interrogated; at [18] he states that it is impossible to predict but there will be adverse treatment and at [33] onwards, he states that there is profiling in respect of Darfuris and that all the non-Arab Darfuris are disproportionately at risk of targeting and racism.

8. At [56]-[58] Peter Verney considers the issue of return and IFA; NISS methods and he points out at [58] that the Respondent accepts that being Darfuri increases the risk of coming to the attention of the authorities. In respect of difficulties in humanitarian terms, at [68] Peter Verney sets out why he believes the UK Danish mission report is not safe and that people can not simply relocate and that Landinfo and DEFAT are not sufficient in their adequacy to depart from the country guidance decision. He states that rebel sympathies will be imputed to him automatically because of his ethnicity.

Mr Nicholson stated that there is a previous report at 123 of previous bundle dated January 2018 which reached very similar conclusions and in October 2017 at page 144 and May 2015 at pages 159-160, albeit is mostly concerned with ethnicity. He also sought to rely on the Amnesty International report at page 94, which raises the question of non-refoulement from Belgium.

9. Mr Nicholson submitted that there was no substance to the submission on the part of the Secretary of State, but even if there were, Peter Verney has addressed it and that was sufficient for the appeal to be allowed. He submitted that, following *Devaseelan* [2002]

UKAIT 00702 the decision of Judge Holt is the starting point. On the basis of this decision the Appellant was not believed to be a non-Arab Darfuri. Whilst Judge Walker's decision was "rather confusing" he accepted the witness evidence that Appellant is Darfuri, but seems by implication to have upheld Judge Holt's other findings.

Mr Nicolson submitted that there had clearly been interpreter confusion and the Judge was clearly wrong about the Peter Verney conclusions in respect of ethnicity and as an expert. Everything else about the Appellant's life suggests that he is a typical non-Arab Darfuri, displaced by the difficulties to Khartoum and there was nothing there to displace the view he is a simply non-Arab Darfuri and there was nothing to detract from the general position that Peter Verney has emphasised in respect of the discrimination, racism and ill-treatment which amounts to persecution in law.

10. I reserved my decision, which I now give with my reasons.

Findings

11. It is necessary to determine the appeal on the basis of the country guidance and up to date background and expert evidence. In *AA (Non-Arab Darfuris - relocation) Sudan CG* [2009] UKAIT 00056, the Upper Tribunal held as follows:

"All non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. HGMO (Relocation to Khartoum) Sudan CG is no longer to be followed, save in respect of the guidance summarised at (2) and (6) of the headnote to that case...

However, as regards other aspects of the guidance given in HGMO, nothing in the recent evidence or the OGN indicates any reason to depart from the guidance summarised in paragraphs (2) and (6) in the head note to HGMO. These state as follows:

"(2) Neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) are as such at real risk on return to Khartoum

(6) An appellant will be able to succeed on the basis of medical needs only in extreme and exceptional circumstances."

12. In *MM (Darfuris) Sudan CG* [2015] UKUT 00010 (IAC) the Upper Tribunal held:

"13. In such circumstances the appellant is entitled to succeed in his asylum appeal unless it can be shown that since AA there is now cogent new evidence casting a different light on the situation of the Berti and/or non-Arab Darfuris. On the contrary, we find:-

(a) that the respondent has maintained word for word the position as set out in her 2009 OGN. In the latest version (V.17.0 updated August 1012), the same wording is now contained at 3.9.12 and at 3.10.1 it is stated that applicants can base their claim on membership of the Mussaleit, Zaghawa, Fur "or the other ethnic groups from the Darfur States".

(b) *The expert evidence from Mr Verney considers that the current situation in terms of risk for non-Arab Darfuri (including the Berti) has worsened. As already noted, Ms Holmes did not seek to impugn his evidence nor was she able to identify any other evidence pointing in a different direction.*

(c) *Neither the country guidance case of AA nor the current Home Office OGN qualifies its identification of those who are at real risk of persecution by reference to whether an element of the risk they face derives from the fact of being a returnee from the UK, but if that factor is taken into consideration, it seems to us that Mr Verney is right to consider that it is one which increases to some degree the level of risk for such claimants. It is true that according to Mr Verney the Sudanese authorities operate a highly sophisticated surveillance of Sudanese nationals in the UK and so might be expected to know through their intelligence who are those actively associated with the rebel movement and those who are not. However, there is insufficient evidence to show that the actions and decisions taken by the authorities in Khartoum or elsewhere in Sudan, either at the airport or thereafter, are based on such intelligence.*

14. *In light of the above, our general conclusion is as follows:*

In the country guidance case of AA (Non-Arab Darfuris-relocation) Sudan CG [2009] UKAIT 00056, where it is stated that if a claimant from Sudan is a non-Arab Darfuri he must succeed in an international protection claim, "Darfuri" is to be understood as an ethnic term relating to origins, not as a geographical term. Accordingly it covers even Darfuris who were not born in Darfur."

13. First tier Tribunal Judge Walker found that the Appellant is from a Darfuri tribe (Bargo). Thus in light of the decision in *MM (op cit)* he succeeds: "unless it can be shown that since AA there is now cogent new evidence casting a different light on the situation of the Berti and/or non-Arab Darfuris."

14. I have concluded that the evidence contained in the Respondent's CPIN of September 2018, much of which was taken from the previous CPINs, does not amount to cogent new evidence which casts a different light on the situation for non-Arab Darfuris. I find that the various reports of Peter Verney, most recently updated on 30 August 2018, have consistently maintained that the Appellant would be at risk on return to Sudan: [9]-[19] of the supplementary bundle refers. He states therein:

"4. I am aware of the Home Office's assertion in current asylum cases that it is justifiable to depart from current Country Guidance on non-Arab Darfuris "AA" [2009] and "MM" [2015] on the basis of the HO's own internal notes.

5. I contest this departure because it does not take into account the continuing war in Darfur and its repercussions and ramifications elsewhere in the country.

6. There has been no substantial improvement in conditions in Sudan since the UK asylum Country Guidance "MM"

...

14. Mr A is a non-Arab Darfuri who has claimed asylum in the UK and in doing so has given evidence which casts the government of Sudan in a bad light. The

regime is resentful of such actions, which is treated as betrayal and evidence of a desire to see the government brought down.

15. He would be highly exposed as an individual on arrival at Khartoum Airport, if returned.

16. He will be recognisable as a western Sudanese non-Arab from his accent and physical appearance and as such will face an elevated level of risk of adverse treatment, starting with being stopped and taken for interrogation at the airport

...

77. He is not necessarily "wanted" as an individual, but in any part of Sudan he will be recognisable as a Darfuri non-Arab and easily singled out. When the authorities notice him he is liable to dangerous persecution because of his ethnic identity and the imputation of "rebel" sympathies."

15. I have applied *Devaseelan (op cit)* and note that Judge Holt, who determined the Appellant's appeal on 4 June 2015, comprehensively disbelieved his account. Whilst First tier Tribunal Judge Walker made a finding that, in light of new evidence the Appellant is indeed Bargo and thus a non-Arab Darfuri, he did not find that the Appellant is of adverse interest to the authorities. In the absence of any challenge to or reason for departing from the finding of Judge Holt, her finding that the Appellant would not be at risk of persecution in Sudan on account of political activities is upheld.

16. However, in light of the finding of Judge Walker that the Appellant is a non-Arab Darfuri and in light of my finding that the evidence the Respondent seeks to rely upon is not sufficient to show that the CG in *MM (Darfuris)* can no longer be relied upon, the appeal falls to be allowed on the basis of the Appellant's ethnicity.

Notice of decision

17. The appeal is allowed on the basis that the Appellant is a refugee within the meaning of the 1951 UN Convention.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

dated 19 December 2018