



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

Appeal Number: PA/04245/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 1st April 2019

**Decision & Reasons
Promulgated
On 25 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**M. A. I.
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr T Hussain instructed by Halliday Reeves Law Firm

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Ennals made following a hearing at Manchester on 27th April 2018.

Background

2. The claimant is a citizen of Sudan and a member of the Bergo tribe from Mujhajariya village in Darfur.

3. The Secretary of State accepted the claimant's nationality and ethnicity and that his village had been attacked by government forces. He did not accept that the claimant himself was arrested, detained and then released, nor that he was of any interest to the authorities. He argued that the country guidance cases of AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 10 should no longer be followed.
4. The judge recorded that he was obliged to follow country guidance cases unless very strong reasons, supported by cogent evidence, had been adduced justifying him not doing so. The Secretary of State bore the burden to justify such a departure.
5. The judge wrote as follows:

“She relies on the policy document referred to in para 13 above. This relies on three documents: an Australian Government country report from April 2016; a joint Home Office/Danish Government report from August 2016, and a letter from the British Embassy in Khartoum of September 2016. These reports indicate, according to the HO document, that a substantial population of non-Arab Darfuris live in Khartoum and surrounding areas and are able to go about their daily lives. It was suggested that levels of discrimination were linked to how politically involved someone was. The HO guidance, and the decision letter in this case, argued that the evidence of these three reports suggested that there was no longer systematic discrimination against non-Arab Darfuris, on the basis of their ethnicity alone, at least around Khartoum”.
6. The judge concluded as follows:

“The appellant's bundle includes reports from 2018 from Human Rights Watch, UN News Centre Sudan and Amnesty International, attesting to the ongoing dire humanitarian situation in Sudan. They do not specifically address whether non-Arab Darfuris are at risk solely on the grounds of their ethnicity. While the three reports relied on by the respondent do indeed suggest that ethnicity alone may not be such a clear risk factor, it is not clear to me from the Home Office guidance note the extent and nature of the research carried out for each report. It is also not clear that they are reporting an improved situation, rather than putting a different view in relation to an unchanged situation.

While I note the conclusions of the reports relied upon by the respondent, I am not persuaded that she has present the necessary very strong grounds supported by cogent evidence to justify me departing from the earlier country guidance”.
7. On that basis he allowed the appeal.

The Grounds of Application

8. The Secretary of State sought permission to appeal on the grounds that the judge had not properly engaged with the evidence placed before him. Had he directed himself to the footnotes within the report he would have

appreciated that it consisted of information from a variety of sources which made the assessment of the situation within Sudan at different points in time between 2005 and 2017. The joint Fact-Finding Report sets out in its introduction that it was undertaken during various missions during 2016. 29 various sources were consulted including various NGOs and the report sets out in full its term of reference in its appendix. It was not suggested that the judge should research the footnotes but they and the appendices and introductions clearly identify the time period which the report covers, the terms of reference and the sources relied upon. The report required no further research beyond the documents. The judge did not address what elements of the Secretary of State's evidence concerned him and failed to give adequate reasons for rejecting it.

9. Permission to appeal was initially refused by Judge Kelly but upon re-application granted by Upper Tribunal Judge Chalkley.

Submissions

10. Mr Diwnycz relied on his grounds but admitted that he was not aware that his argument had been successful in other cases before the Upper Tribunal.
11. Mr Hussain submitted that the Secretary of State simply had not discharged the burden of proof upon him by producing evidence which was capable of overturning a series of country guidance cases over a period of ten years. The Country Policy and Information Note upon which the Secretary of State relied did not contain the original source material. To his knowledge there were more than a dozen cases where First-tier Judges had been overturned by the Upper Tribunal when they had sought to depart from the country guidance cases on the basis of this material.

Findings and Conclusions

12. The judge did not err in law. He was presented with a CPIN Report which contains a number of footnotes referencing the material upon which the report's conclusions rely. The source material itself was not before the judge. If the Secretary of State is attempting to overturn a series of country guidance cases, coming to the same conclusion that non-Arab Darfuris are not able to live a normal life in Khartoum, then he needs to provide all of the evidence upon which he seeks to rely including source material. As the judge said, it is quite unclear from the CPIN whether it is the Secretary of State's case that the situation has improved since the country guidance cases were decided, or whether it is simply the Secretary of State's view that they ought to have reached a different conclusion.
13. In these circumstances, there is no error of law in his concluding that the Secretary of State had not discharged the burden upon him.

Notice of Decision

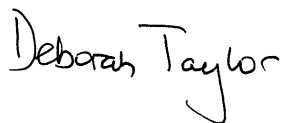
14. The original judge did not err in law. His decision stands.

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 19 April 2019

A handwritten signature in black ink that reads "Deborah Taylor". The signature is written in a cursive style with a large 'D' and 'T'.

Deputy Upper Tribunal Judge Taylor