



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number PA/05522/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard by *Skype for Business*  
on dates to 12 May 2021**

**Decision & Reasons Promulgated  
On 28 May 2021**

**Before**

**UT JUDGE MACLEMAN**

**Between**

**MUZAMEL YOUSIF**

Appellant

and

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

Respondent

*For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors*

*For the Respondent: various Senior Home Office Presenting Officers on  
different dates*

**DETERMINATION AND REASONS**

1. FtT Judge Agnew dismissed the appellant's appeal by a decision promulgated on 25 September 2019.
2. By a decision dated 20 and issued on 25 February 2020, which should be read along with this decision, I declined to uphold the appellant's grounds of appeal to the UT, apart from ground 1 (i), which revealed a lacuna in an otherwise comprehensive decision. The judge was asked, whether country guidance was relevant or not, and whether the appellant was otherwise credible or not, to allow his appeal because of risk to any returning

Nubian. That required an assessment based on the evidence cited by the expert witness, Mr Verney, (regardless of other well-founded criticisms of his reports) and on the rest of the evidence presented by both sides. The appellant submitted that the FtT's decision did not resolve that final issue. The respondent was unable to show that it did.

3. The decision of the FtT was therefore set aside only to the extent required for resolution of the issue of risk to any returning Nubian.
4. The case was retained in the UT for that purpose.
5. Mr Verney subsequently gave evidence further to his several reports, and was cross-examined and re-examined. A further hearing for submissions was not concluded, due to faulty remote connections. Parties have summarised their final positions in written skeleton arguments. On 12 May 2021 the hearing of the case was completed by brief oral submissions.
6. I am obliged to Mr Winter, and to the several representatives for the Home Office, for their assistance.
7. I reserved my decision.
8. The starting points are country guidance and the findings of fact of the FtT.
9. *IM & AI Sudan CG [2016] UKUT 00188*, published on 14 April 2016, remains on the UT's list of country guidance cases. Its headnote states:
  - 1) *In order for a person to be at risk on return to Sudan there must be evidence known to the Sudanese authorities which implicates the claimant in activity which they are likely to perceive as a potential threat to the regime to the extent that, on return to Khartoum there is a risk to the claimant that he will be targeted by the authorities. The task of the decision maker is to identify such a person and this requires as comprehensive an assessment as possible about the individual concerned.*
  - 2) *The evidence draws a clear distinction between those who are arrested, detained for a short period, questioned, probably intimidated, possibly rough handled without having suffered (or being at risk of suffering) serious harm and those who face the much graver risk of serious harm. The distinction does not depend upon the individual being classified, for example, as a teacher or a journalist (relevant as these matters are) but is the result of a finely balanced fact-finding exercise encompassing all the information that can be gleaned about him. The decision maker is required to place the individual in the airport on return or back home in his community and assess how the authorities are likely to re-act on the strength of the information known to them about him.*
  - 3) *Distinctions must be drawn with those whose political activity is not particularly great or who do not have great influence. Whilst it does not take much for the NISS to open a file, the very fact that so many*

*are identified as potential targets inevitably requires NISS to distinguish between those whom they view as a real threat and those whom they do not.*

- 4) *It will not be enough to make out a risk that the authorities' interest will be limited to the extremely common phenomenon of arrest and detention which though intimidating (and designed to be intimidating) does not cross the threshold into persecution.*
- 5) *The purpose of the targeting is likely to be obtaining information about the claimant's own activities or the activities of his friends and associates.*
- 6) *The evidence establishes the targeting is not random but the result of suspicion based upon information in the authorities' possession, although it may be limited.*
- 7) *Caution should be exercised when the claim is based on a single incident. Statistically, a single incident must reduce the likelihood of the Sudanese authorities becoming aware of it or treating the claimant as of significant interest.*
- 8) *Where the claim is based on events in Sudan in which the claimant has come to the attention of the authorities, the nature of the claimant's involvement, the likelihood of this being perceived as in opposition to the government, his treatment in detention, the length of detention and any relevant surrounding circumstances and the likelihood of the event or the detention being made the subject of a record are all likely to be material factors.*
- 9) *Where the claim is based on events outside Sudan, the evidence of the claimant having come to the attention of Sudanese intelligence is bound to be more difficult to establish. However it is clear that the Sudanese authorities place reliance upon information-gathering about the activities of members of the diaspora which includes covert surveillance. The nature and extent of the claimant's activities, when and where, will inform the decision maker when he comes to decide whether it is likely those activities will attract the attention of the authorities, bearing in mind the likelihood that the authorities will have to distinguish amongst a potentially large group of individuals between those who merit being targeted and those that do not.*
- 10) *The decision maker must seek to 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.*
- 11) *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 claimant will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention but meets the threshold of a real risk of serious harm.*
- 12) *Where a claimant has not been believed in all or part of his evidence, the decision maker will have to assess how this impacts on the requirement to establish that a Convention claim has been made out. He will not have the comprehensive, composite picture he would otherwise have had. There are likely to be shortfalls in the evidence that the decision maker is unable to speculate upon. The final analysis*

*will remain the same: has the claimant established there is a real risk that he, the claimant, will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention and release but meets the threshold of serious harm.*

10. On 1 September 2020, the UT published further guidance in *KAM* (Nuba - return) Sudan CG [2020] UKUT 00269 (IAC), headnoted thus:
  - a) *An individual of Nuba ethnicity is not at real risk of persecution or serious ill-treatment on return to Sudan (whether in the Nuba Mountains, Greater Khartoum or Khartoum International Airport) simply because of their ethnicity.*
  - b) *A returning failed asylum-seeker (including of Nuba ethnicity) is not at real risk of persecution or serious ill-treatment at the airport simply on account of being a failed asylum-seeker.*
  - c) *Prior to the political developments in 2019, individuals who were at risk on return (whether at the airport or in Greater Khartoum) were those who were perceived by the Sudanese authorities to be a sufficiently serious threat to the Sudanese Government to warrant targeting.*
  - d) *The assessment of that risk required an evaluation of what was likely to be known to the authorities and a holistic assessment of the individual's circumstances including any previous political activity in Sudan or abroad and any past history of detention in Sudan. Factors include whether the individual was a student, a political activist or a journalist; their ethnicity; their religion (in particular Christianity); and whether they came from a former conflict area (such as the Nuba Mountains).*
  - e) *Whilst the question of perception of political opposition underlying (c) above remains the same since the 2019 political developments, when assessing any risk to an individual now, the effects of the 2019 political developments are relevant and are likely to affect the Sudanese authorities' view of, and attitude towards, those who might be perceived as political opponents. Further, the 2019 political developments are likely to have greatly reduced the interest of the Sudanese government in suppressing political opposition by violent or military action.*
  - f) *Internal relocation to Greater Khartoum for a person of Nuba ethnicity must depend upon an assessment of all the individual's circumstances including their living conditions, their ability to access education, healthcare and employment. Despite the impoverished conditions and discrimination faced by Nuba when living in the so-called 'Black Belt' area of Greater Khartoum, relocating there will not generally be unduly harsh or unreasonable.*
11. The findings of fact on which the appellant principally relies are as stated at [4] of his skeleton argument: he is Nuba and has attended two demonstrations in London.
12. The appellant's submission at [5] develops his primary position that he falls within the guidance in *KAM*, for these reasons:

- (i) although the UT states at paragraph 184 of *KAM* that any oppositional activity against the Bashir regime may have dwindling relevance, the UT also states at paragraph 179 that the situation has not evolved such that the UT could be confident that the risk to those who are, or are perceived to be, a threat to the Sudanese regime, which the UT accepted existed before the political developments in 2019 has now completely evaporated with the fall of the Bashir regime. The central question remained whether the individual's circumstances as known to (or suspected by) the Sudanese authorities create a perception that the individual is a sufficiently serious threat to the Sudanese government to warrant targeting and ill-treatment. A fact sensitive assessment is required taking into account all the circumstances with reference to factors identified at paragraphs 134-135 of *KAM* (paragraphs 182-183 of *KAM*).
- (ii) although the expert's view was that ethnicity on its own was sufficient, the appellant maintains, even in light of the political developments, that his Nuba ethnicity, being returned as a failed asylum seeker, being from the Nuba Mountains which is a former conflict area (see appellant's statement in original bundle for FTT hearing at paragraph 2), having travelled abroad, possibly being a male of military age and the 2 demonstrations he attended in London as being sufficient on a cumulative basis to show he is at real risk of at least being perceived as a threat (see headnotes (a), (b), (d), (e), paragraphs 227 and 134-135 of *KAM*). *KAM* accepted that Nuba are marked by their physical appearance (paragraph 116), that they have been regarded with suspicion as possible political opponents and associated with rebel forces (paragraph 117) and that there is higher risk of investigation of a Nuba person at the airport (paragraph 227). In light of the approach of *KAM*, the various factors relied upon and the expert's evidence, the political developments are unlikely to mitigate any real risk to the appellant;
- (iii) the appellant's position is that, applying the low standard, he will be identified and questioned on return. He is not expected to lie. The expert's evidence was that the factors narrated above are sufficient for the appellant to be at real risk. The expert's evidence was that people have been confronted with evidence of taking part in demonstrations in the UK. The expert's view was that there are strong indications that the Sudanese government are involved both in human resources and in electronic surveillance in monitoring demonstrations. The expert's view was that the term "*low level*" can be misleading as it is not a predictor as to who will be ill-treated. The expert's evidence was that something quite small is likely to tip the balance against the appellant and that there are sufficient factors for that to be done (*RT (Zimbabwe) v Secretary of State for the Home Department [2013] 1 AC 152* at paragraphs 53-54 per Lord Dyson). In light of that information it is submitted that on the low standard applicable, and giving the benefit of the doubt to the appellant, that there is a real risk to the appellant (in support of the foregoing see

paragraphs 26-28, 61-65, 66-70, 73, 116, 134-140, 145-147 of expert report prepared 25<sup>th</sup> Jan 2020 contained in the appellant's first inventory; paragraphs 1-13, 63-67 of the expert report prepared 22<sup>nd</sup> December 2020 contained in the appellant's fourth inventory of productions);

(iv) in terms of headnote (f) of *KAM*, internal relocation does not arise if the appellant is at real risk at the airport.

13. That line of argument does not keep itself strictly within the country guidance. To an extent, it relies on unproved assertions of the appellant and on contentions of Mr Verney which go beyond the guidance.
14. There is also some difficulty in that Mr Verney's opinion is based on the account advanced by the appellant and not on the facts as found by the FtT (see e.g. the conclusions in his latest report, December 2020, at paragraphs 141 and 142).
15. The FtT at [61] found the appellant's *sur place* activities minimal and of such low level as not to have drawn attention, even bearing in mind evidence of covert surveillance.
16. I prefer the submission at [2] for the respondent that once guidance is applied to the preserved findings of the FtT, the appellant has not made out a need for protection. He is not at risk at the airport, or elsewhere; and if he did require to relocate within Sudan, he could do so.

17. The case comes back to the point on which an oversight by the FtT was identified: whether the appellant is at risk because he is Nubian, without more.
18. The appellant's submissions at [6] put his case on "very strong grounds supported by cogent evidence from the expert on which to depart from the country guidance insofar as it states that ethnicity is not sufficient on its own and/ or places reliance on the fall of the Bashir regime".
19. That is the correct approach, for which the appellant cites *R (SG (Iraq) v Secretary of State for the Home Department [2013] 1 WLR 41* at [47] per Stanley Burnton LJ.
20. I further note that *SG* at [67] holds that a country guidance decision remains authoritative "unless and until it is set aside on appeal or replaced" by subsequent guidance.
21. The submission continues:

The expert focuses on 2 key aspects:

  - (i) racial profiling is still of the utmost importance. The expert's view was that there is the mentality of regarding non-Arabs as second class citizens. That is also illustrated by the long running war in the Nuba Mountains;
  - (ii) essentially the same people associated with the Bashir regime are still in charge. The expert spoke of the domination of the security and intelligence services and where expenditure has been increased on the military. The expert noted that there were still ongoing attacks against civilians and there was the imminent removal of UNMIT. The expert recalled the 1985 uprising which caused an expression of optimism. However that optimism was short lived where the same Islamist forces rose to power. In effect the move to democracy has stalled. The references in the expert reports which pre-date *KAM* and post-date *KAM* do not indicate that there is any real change from the Bashir regime and as such the country guidance should be departed from;
  - (iii) for the 2 preceding paragraphs reference is made to paragraphs 8-15, 26-28, 73-95, 96-133, 137-140 of expert report prepared on 25<sup>th</sup> Jan 2020 contained in the appellant's first inventory; pages 35, 37, 58-60, 63-69 of the appellant's first inventory; paragraphs 1-13, 19-60 and 63-67 of the expert report prepared 22<sup>nd</sup> December 2020 contained in the appellant's fourth inventory; pages 9-24, 36-44, 46-51, 55-56 of the appellant's fourth inventory; paragraphs 3-15 of the expert report of 31<sup>st</sup> December 2020 in the appellant's sixth inventory; pages 4-20, 22-24, 26-27, 31-32 of the sixth inventory; see seventh inventory and article therein; *MD (Guinea) v Secretary of State for the Home Department 2011 SC 237* at paragraph 6 per Lord Clarke.

22. The respondent says that the evidence of Mr Verney “merely replicates submissions considered and rejected in *KAM*”.
23. There is force in that counter-submission. The case for the appellant does not depend on evidence post-dating *KAM*, or which was not before the UT in that case. No attempt has been made at such a distinction. Rather, Mr Verney is strongly of the view that *KAM* was wrongly decided, on the evidence which was before the UT. (Mr Verney did not give evidence in *KAM*, but he takes a similarly critical view of *IM and AI*, in which he was one of the expert witnesses.)
24. The respondent says that *KAM* is not under further appeal. Mr Winter did not suggest that it is. However, it is in principle open to the UT to find that a guidance case has been wrongly decided, if the challenge is strong enough.
25. The respondent referred to these passages in her *Country Policy and Information Note Sudan: Nuba - Version 1.0 December 2020*:
  - 2.4.3 The evidence submitted in *KAM* covered the period up to December 2019. The UT observed that - considering events in the round including the overthrow of former President al Bashir, the establishment of a transitional government including civilians, a new Constitution, and the prospect of peace with ongoing talks between the government and rebels (see paragraphs 170 to 174) - up to that point ‘The direction of travel remains firmly pointing in the way of democratic change and the powers of law and order and a move to stability and resolving difficulties politically rather than through force or violence’ (paragraph 175).
  - 2.4.4 The situation during 2020 has broadly maintained this ‘direction of travel’ towards democracy and the rule of law. For example: the peace agreement with the rebel groups, appointment of civilian state governments, amendments to the penal code which have improved human rights, the removal of Sudan from the US’ State Sponsor of Terror list which should allow access to international finance and trade. While there continue to be human rights violations, particularly in South Kordofan, the country evidence since December 2019 does not indicate that the Nuba have been targeted because of their ethnicity by the state. A person who is a Nuba is unlikely to be at risk of persecution simply because of their actual or imputed ethnicity.
  - 2.4.5 Each case must be considered on its facts taking into account the risk factors identified by the UT in *KAM*.
26. The respondent also referred to the note at 7.1.1, to the effect that no specific information of the state targeting the Nuba has been found since October 2019, which was the last hearing date of *KAM*.
27. The note is to be treated as a source of evidence and is not to be uncritically adopted for anything it says by way of policy. Mr Verney in cross-examination sharply disagreed with its terms. However, the note does take the position a little further up to date than in *KAM*.



28. Mr Verney is thoroughly steeped in the history and politics of Sudan. He considers that its people have rejected and overthrown Islamic dictatorship in the past, only to find themselves again under the same rule. Recent changes are only cosmetic. The semi-hidden hand of the old regime holds power in the land. The apparent political progress will inevitably be reversed, as has happened over past decades, in accordance with his predictions. The policy of the “deep state” towards the Nubians is ethnocidal. The authorities are likely to seize the appellant on arrival, with drastic consequences.
29. Mr Verney paints a hideously grim picture. It is impossible to say that the long run of events may not prove him right. However, the appellant has not shown that the underlying evidence, by way of Mr Verney’s interpretation, requires conclusions contrary to *KAM*. I decline to depart from that guidance.
30. On the one issue on which the decision of the FtT was set aside, the appellant has failed to show that any Nubian returning to Sudan is currently at risk of persecution. His appeal is dismissed.
31. No anonymity direction has been requested or made.



17 May 2021  
UT Judge Macleman

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email.**