



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/09774/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**Decision &  
Promulgated**

**Reasons**

**On 11<sup>th</sup> May 2016**

**On 20<sup>th</sup> May 2016**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**AOM  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: Ms Mensah, Counsel instructed by AJO Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a male national of Sudan born in 1994. He has permission to appeal<sup>1</sup> against the decision of the First-tier Tribunal (Judge Cruthers)<sup>2</sup> to dismiss his appeal against a decision to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999. That immigration decision had followed from the rejection of the Appellant's asylum and human rights claim.

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<sup>1</sup> Permission refused by Designated Judge of the First-tier Tribunal Manuell on the 29<sup>th</sup> January 2015 but was granted upon renewed application by Upper Tribunal Judge Reeds on the 15<sup>th</sup> May 2015

<sup>2</sup> Determination promulgated 5<sup>th</sup> January 2015

## **Background and Matters in Issue**

2. The basis of the Appellant's protection claim was that he is a member of the non-Arab Tunjur tribe of North Darfur and that there was a real risk of persecution for reasons of his political opinion by the authorities in Sudan. He gave a history of persecution for reasons of his ethnicity and imputed political opinion which included a detention in 2008.
3. The Respondent accepted that the Appellant was Sudanese, but not any other element of his claim.
4. On appeal the Appellant gave oral evidence. The First-tier Tribunal accepted that the Appellant was from the Tunjur tribe and that his origins lay in North Darfur. It rejected core elements of the Appellant's historical account, including his claim that he had been detained in 2008. Turning to the country guidance in AA (non-Arab Darfuris-relocation) Sudan CG [2009] UKAIT 00056 the determination notes that five years had passed since that decision. It found that tensions had eased since that decision had been taken. At paragraph 49 the Tribunal finds that the Appellant would not be "relocating" to Khartoum because he had lived there for 11 years before he left the country: Khartoum was in effect his home area. There was no risk of persecution to him there. The appeal was thereby dismissed.
5. The grounds of appeal raise various points but in view of the concession made by the Respondent I need not address them in detail. The central complaint was that having found the Appellant to be a non-Arab Darfuri it was not open to the Tribunal to go behind the country guidance in AA, which stated in terms that persons in that class are refugees. The fact that he had previously lived in Khartoum did not affect that analysis. Mr McVeety conceded that the First-tier Tribunal had erred in departing from the country guidance and on the basis of the facts found invited me to allow the appeal.
6. Although the First-tier Tribunal cannot have known this, on the very same day that its decision was promulgated the Upper Tribunal had issued new country guidance on the very same point. In MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) it heard uncontested expert evidence from Mr Peter Verney about whether there had been any improvement in the situation faced by non-Arab Darfuris. It held that the authorities in Khartoum were not interested in whether the individual concerned lived in Darfur or indeed had ever been there. The focus for their adverse attention was the individual's ethnic origins, and upon arrival, (or in any other interaction) these would be evident. The Respondent submitted no evidence to contradict the testimony of Mr Verney that in his opinion non-Arab Darfuris (Tunjur and Berti) were at risk no matter their geographical origins. The headnote summarises the Tribunal's findings:

*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.*

The guidance in AA is expressly maintained. It follows that Mr McVeety was correct to have made the concession that he does.

## **Decisions**

7. The determination of the First-tier Tribunal contains an error of law and it is set aside.
8. The appeal is re-made in the following terms:
  - i) The appeal is allowed on asylum grounds
  - ii) The Appellant is not entitled to humanitarian protection because he is a refugee
  - iii) The appeal is allowed on human rights grounds.

Upper Tribunal Judge Bruce  
11<sup>th</sup> May 2016