



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/02626/2019**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On August 8, 2019**

**Decision & Reasons Promulgated  
On 21 August, 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR A A A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Islam, Legal Representative

For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Sudan and is accepted as being a member of the Berti tribe. He arrived in this country on August 29, 2018 and claimed asylum two days later. The respondent refused his application on March 6, 2019 and the appellant appealed this decision on March 20, 2019 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
2. His appeal came before Judge of the First-tier Tribunal Fowell and in a decision promulgated on May 30, 2019 the Judge dismissed his appeal.
3. Permission to appeal was granted by Judge of the First-tier Tribunal O'Garro on June 28, 2019 who found it was arguable that by failing to

follow the country guidance decisions of AA (Non-Arab Darfuris – relocation) Sudan CG [2009] UKAIT 0056 and MM (Darfuris) Sudan CG [2015] UKUT 00010 the Judge had materially erred.

4. The matter came before me on the above date and I raised with Ms Pettersen the issue highlighted in the permission to appeal.
5. In essence, the Judge had dismissed the appeal preferring to follow the decision of IM and AI (Risks – membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 188 as it was the most recent guidance.
6. In doing so the Judge appeared to have failed to take into account what the Tribunal had stated at paragraph 217 of that decision, namely that all non-Arab Darfuris remained at a risk of persecution following the earlier country guidance cases and that the appellants in the case of IM and AI were not Darfuri.
7. Ms Pettersen accepted that the Judge's approach overlooked the fact that non-Arab Darfuris remained at risk per se in light of the 2009 and 2015 country guidance cases and that the Tribunal made clear in IM and AI that the approach in AA and MM was still to be followed.
8. Having identified that there was an error in law I did not require any further submissions from either representative. It was accepted that as there was an error of law the decision would have to be set aside and following the two country guidance cases this appellant's appeal should be allowed on protection grounds and under Article 3 ECHR.

#### **NOTICE OF DECISION**

9. I set aside the original decision and allow the appeal on protection grounds and under Article 3 ECHR.

#### **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 his 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

13/8/2019



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

There is no fee award as no fee was paid.

Signed

Date

13/08/2019

A handwritten signature in black ink, appearing to read 'SPALIS', with a long horizontal stroke extending to the right.

Deputy Upper Tribunal Judge Alis