



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

Appeal Number: PA/05331/2018

THE IMMIGRATION ACTS

Heard at Birmingham

Determination & Reasons

On 4th July 2019

**Promulgated
On 19th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard (Solicitor), Fountain Solicitors (Walsall)

For the Respondent: Mrs H Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge James, promulgated in Birmingham on 25th June 2018, following a hearing on 24th May 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sudan, and was born on 5th May 1997. He appealed against the decision of the Respondent on 16th April 2018 rejecting his claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a non-Arab Darfuri. He faces real persecutory risk if returned to Sudan. He had breached the terms of his release from detention. The Respondent had accepted that the Appellant was a Sudanese national. The Respondent Secretary of State did not accept that the Appellant was also a member of the Hausa tribe (see paragraph 3).

The Judge's Findings

4. The judge observed early on in the determination that "the parties agreed that the Appellant was a non-Arab Darfuri" (paragraph 10), given that this was the case, the judge went on to state that there were two broad factual matters for determination by the Tribunal. The first of these was whether the Appellant was a member of the Hausa tribe. The second was whether he was detained by the authorities following his attendance at a demonstration and was released on conditions, which he had then breached (paragraph 25). The judge observed that the Appellant had a witness who had confirmed that the Appellant was a member of the Hausa tribe and that they had communicated in Sudan using Hausa. They had last met in Sudan at a wedding within the tribe. Both the Appellant and the witness provided consistent evidence in relation to this event. The judge was accordingly satisfied that the Appellant was a member of the Hausa tribe as he had claimed (paragraph 28). However, the judge then went on to consider the relevant decisions in this area. Consideration was given to **AA (Sudan) [2009] UKAIT 00056** and to **MM (Darfuris) [2015] UKUT 00010**. The judge also had regard to **IM and AI (Sudan) [2016] UKUT 00188** (see paragraphs 18 to 19). The judge then concluded that the Appellant had not been credible in his narrative about being detained by the Sudanese authorities. That being so, the Appellant could not satisfy the criteria as set out in **IM and AI** that in order for a person to be at risk on return to Sudan there must 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. The judge concluded that the Appellant was not a person who engages in political activity or who has significant influence (paragraph 37).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge had erred in law, given that it had been accepted that the Appellant was a non-Arab Darfuri member (paragraph 25) and given that it was accepted that he belonged to the Hausa tribe (paragraph 28). This was because the judge failed to apply the country guidance case of **AA (Non-Arab - Darfur - relocation) Sudan CG [2009] UKAIT 00056**, where it was held that all non-Arab Darfuris are at real risk of persecution on return to Darfur and cannot reasonably be expected to relocate elsewhere to Sudan. The judge failed to apply the country guidance case in **MM (Darfuris) CG [2015] UKUT 00010**, where it was held that those who are ethnic non-Arab Darfuris in origin, regardless of whether they had lived in Darfur or elsewhere in Sudan, would be at risk on return to Khartoum.
7. On 7th August 2018, permission to appeal was granted.

Submissions

8. At the hearing before me on 4th July 2019, Mr Howard relied upon the grounds of application, and Ms Aboni, for her part, conceded that the judge had indeed failed to apply the country guidance cases that had been referred to in the grounds of application. Both sides agreed, that given that all non-Darfuris are at real persecutory risk on return to Darfur, the appropriate course of action in this case for this Tribunal would be to make a finding of an error of law and to remake the decision, by allowing the appeal.

Decision

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2009) such that I should set aside the decision and remake the decision. My reasons are that the judge failed to apply the country guidance case of **AA (non-Arab-relocation) Sudan CG [2009] UKAIT 00056**, which is to the effect that all non-Arab Darfuris are at real persecutory risk. In this case the Appellant is both a non-Arab Darfuri of black African origin as well as being a member of the Hausa tribe. I remake the decision on the basis of the findings of the original judge, the evidence before the Tribunal on that occasion, and the submissions that I have heard today. This appeal is allowed.
10. No anonymity order is made.
11. This appeal is allowed.

Signed

Dated

Deputy Upper Tribunal Judge Juss

12th July 2019