



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10647/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 22 October 2019

Decision & Reasons Promulgated
On 01 November 2019

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

HM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, instructed by Fountain Solicitors
For the Respondent: Ms H Aboni, Senior Presenting Officer

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant herein is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to contempt of court proceedings

DECISION AND REASONS
(Decision given orally on 22 October 2019)

1. This appellant, a citizen of Sudan born in 1995, entered the United Kingdom clandestinely on 11 April 2017 and claimed asylum the following day. The Secretary of State rejected that application in a decision of 7 October 2017 and the subsequent

appeal came before the First-tier Tribunal on 20 November 2017. The First-tier Tribunal refused the appeal in a decision of the 8 December 2017.

2. The First-tier Tribunal found the appellant to be from the Zaghawa tribe. Nothing else about his claimed circumstances in Sudan was found to be true.
3. At paragraphs 41 and 42 of its decision, the First-tier Tribunal summarised the extant country guidance decisions of **AA (non-Arab Darfuri - relocation) Sudan CG [2009] UKAIT 0056** and **MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC)**, which ostensibly concluded that non-Arab Darfuris (such as the appellant) are at risk of being persecuted in Sudan and that it would be unduly harsh to expect them to relocate. It was further found that Darfuri *"is to be understood as an ethnic term relating to origins, not as a geographical term."*
4. Before the First-tier Tribunal, the Secretary of State relied upon a Home Office Country Policy Information Note of 2017 in support of the assertion that the Tribunal should depart from the findings set out in the aforementioned country guidance decisions. Having considered this evidence, the First-tier Tribunal concluded as follows, at para 58;

"Overall I conclude that the updated guidance, drawn as it was from governmental sources, did provide cogent evidence to suggest that merely being of a non-Arab Darfuri ethnicity was not sufficient to establish that there was a real risk of persecution on that ground. The appellant cannot therefore qualify as a refugee on the ground of his ethnicity."
5. Permission to appeal was granted by Upper Tribunal Judge Finch in a decision of 12 February 2018.
6. At the hearing before the Upper Tribunal, Ms Aboni accepted that the decision of the First-tier Tribunal contained an error of law and that it should be set aside. I concur and, in particular, conclude that the evidence relied upon by the First-tier Tribunal in support of its conclusion that an internal flight alternative existed for the appellant in Sudan was not sufficiently cogent so as to be capable of leading to a rational departure from country guidance authority. I therefore set aside the decision of the First-tier Tribunal.
7. I can immediately go on and remake the decision on the appeal.
8. The only material fact in this case is one which is not in dispute i.e. that the appellant is from the Zaghawa tribe in Sudan. As a consequence of this fact, and the terms of the recent reported decision of this Tribunal in **AAR and AA (non-Arab Dafuris - return) Sudan [2019] UKUT 00282**, it is clear that this appeal must be allowed because the appellant is a person who is entitled to the protection of the Refugee Convention. The decision in **AAR** ostensibly concludes that on the available evidence there is no good reason to depart from the country guidance decisions of **AA** and **MM**.
9. Ms Abomi accepted the inevitability of the outcome of this appeal.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

Upon the decision on the appeal being re-made in the Upper Tribunal:

- (a) The appeal is allowed on Refugee Convention and Article 3 ECHR grounds
- (b) The appeal is dismissed on Humanitarian protection grounds.

Signed:

Mark O'Connor

Upper Tribunal Judge O'Connor