



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

Appeal Number PA/12366/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 8<sup>th</sup> April 2019

Decision and Reasons Promulgated  
On 30<sup>th</sup> April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

M A  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Wodehouse (Legal Representative, Hasan Solicitors)  
For the Respondent: Miss S Cunha (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application for asylum was refused by the Secretary of State. His appeal was heard by First-tier Tribunal Judge James at Birmingham on the 12<sup>th</sup> of June 2018 and dismissed in a decision promulgated on the 6<sup>th</sup> of July 2018. The basic facts were not in dispute and against that background the Judge found that the Appellant could return to Khartoum and was not in need of international protection.
2. The Appellant sought permission to appeal to the Upper Tribunal on the grounds that the Judge had not applied the relevant country guidance. Refused permission by the First-tier Tribunal the renewed application was granted with the Judge noting that the First-tier Tribunal Judge had not taken account of the Appellant's age when he left Sudan, sufficiency of protection in his home area or Khartoum or the country guidance cases.

3. At the hearing it was confirmed that the Home Office had not provided a rule 24 response and that the Home Office position was that there was no material error although section 55 had not been considered by the Judge. I observed that this was not a case where section 55 arose and that the credibility of events was not in question.
4. For the Appellant it was argued that the Country Guidance cases had not been applied, it was accepted that the Appellant was a non-Arab Darfuri. There was no reference to alternative evidence such as the Danish report. The Judge referred to the case of IM & AI but neither were non-Arab Darfuris. The findings on risk on return were brief and the correct country guidance showed that the Appellant would be at risk if it was accepted that the Appellant would be detained.
5. For the Home Office it was submitted that in paragraph 39 the evidence did not supplant IM & AI, in paragraph 80 there was reference to Norwegian report and from the report of Dr Bekalo there are non-Arab Darfuri officials, the court had dealt with non-Arab Darfuris but that was not reflected in the headnote. Return was considered on the personal profile and reasons were given. The Appellant had not said he was at risk for the other reasons given.
6. IM & AI concerned, as the first paragraph made clear, that it concerned “Both appellants are citizens of Sudan whose appeals are being re-determined for the purposes of providing Country Guidance as to the risks faced by those returning to Sudan.” There was nothing in the decision that excluded non-Arab Darfuris from the ambit of the decision and one of the Appellant's had been involved in demonstrations for peace in Darfur, the other had at one time claimed to be from the Berti tribe. In paragraph 80 of the decision evidence from individuals with links to Darfur including the Berti tribe was set out. Had the case not applied to non-Arab Darfuris given the nature of events in Sudan it would been explicit.
7. The Appellant had not put forward claims of events that would bring him within the ambit of the guidance of those at risk on return. Given the contents of the discussion in the body of the decision and the evidence that included clear references to the circumstances in Darfur and Darfuris the Judge was entitled to proceed on the basis that the decision in IM&AI applied to non-Arab Darfuris as much as to any other Sudanese nationals seeking to resist return to Sudan.
8. In applying the Appellant's account of events to the guidance in the case law the Judge was entitled to find that the Appellant could be expected to return to Sudan and that he could live in Khartoum. In the circumstances, when read fairly, as a whole and in the light of the full contents of the decision relied on by the Judge, the decision was open to the Judge for the reasons given and discloses no error of law.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Signed: 

Deputy Upper Tribunal Judge (IAC)  
Date 25<sup>th</sup> April 2019

### Fee Award

In dismissing this appeal I make no fee award.

Signed: 

Deputy Upper Tribunal Judge (IAC)  
Dated: 25<sup>th</sup> April 2019