



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006071
First-tier Tribunal No:
PA/54166/2021
IA/12326/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

L
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 20 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Sangha heard on 27 September 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Rodger on 20 December 2022.

Anonymity

3. No anonymity direction was made previously, notwithstanding that this is a protection appeal. Such a direction is now made in view of the appellant's stated fear of the Sudanese authorities.

Factual Background

4. The appellant first arrived in the United Kingdom during January 2013 with leave to enter as a student. That visa was extended until 11 October 2016. The appellant left the United Kingdom and returned to the United Kingdom on 10 September 2015. He applied for asylum on 22 August 2016. That application was refused and the appellant's appeal against that decision was dismissed. On 29 November 2019, the appellant lodged further submissions.
5. The basis of the appellant's protection claim is that he is a Black African Sudanese national and a Nuba person belonging to the Koalib tribal group. The appellant also relies on his sur place political activities against the Sudanese government. In particular, the appellant claimed to be actively involved in the Sudan People's Liberation Movement and the Nuba Mountains Solidarity Abroad Group. The appellant also claimed that he had mental health issues for which he was receiving treatment and stated that removal to Sudan would breach his Article 3 and 8 rights on medical grounds. Reliance was placed on the appellant's Article 8 private life rights.
6. In a decision dated 9 August 2021, the Secretary of State refused the appellant's claims. In doing so, the respondent referred to the findings of First-tier Tribunal Judge Birrell. Those findings included an acceptance that the appellant was a Sudanese national of Nuba ethnicity. However, the appellant's claim to fear persecution in Sudan owing to his relationship with a commander in the SPLM as well as his sur place activities was rejected owing to serious adverse credibility issues. The Secretary of State did not accept that the appellant's additional sur place activities would put him at risk in Sudan. Little weight was placed on the supporting letters and photographs produced by the appellant. While the respondent accepted that the appellant was of non-Arab Darfurian origin, an expert report of Maddy Crowder as to the risk for Black African Darfurians was considered to pre-date positive changes in Sudan in relation to the current political and security situation. The respondent also referred to the decision in *KAM (Nuba-return) Sudan CG [2020] UKUT 00269 (IAC)*. It was not accepted that the decision to refuse the appellant's human rights claimed breached either Article 3 or 8 ECHR.

The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the issues were identified to be asylum, Humanitarian Protection and Article 3 ECHR. In the decision and reasons, the judge did not depart from Judge Birrell's finding that the appellant would not

be at risk of persecution in Sudan owing to his ethnicity. Judge Sangha also found that there was very little additional supporting evidence of the appellant's sur place activities amounted to no more than being a bystander and declined to depart from the previous findings. The judge found that the appellant could not meet any of the requirements of paragraph 276ADE of the Rules or qualify for leave to remain on compassionate grounds.

The grounds of appeal

8. In the grounds of appeal, the following points were made.
9. Firstly, that the First-tier Tribunal erred in failing to follow Country Guidance without good reason. Reference was made to the Country Guidance in *KAM* at [38] where it was stated that the previous CG case law remained unchanged as far as 'non-Arab Darfuris' was concerned.
10. Secondly, there had been a failure to consider photographic evidence indicating that the appellant was not merely a bystander but had undertaken activities while attending demonstrations in the United Kingdom.
11. Thirdly, there was said to be a failure to adequately assess the risk to the appellant owing to his political activities including that the appellant could not be expected to lie about his political activities to avoid persecution.
12. Fourthly, there had been a failure to consider the appellant's ethnicity when assessing whether there would be very significant obstacles to his reintegration in Sudan and a failure to consider section 117B of the Nationality, Immigration and Asylum Act 2022.
13. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

At paragraph 40 of the judgment there is a finding that the appellant is of non-Arab Darfurian ethnicity. Whilst it is not clear whether the judge's attention was drawn to the country guidance on non-Arab Darfurians, there is an arguable error of law in failing to apply the country guidance in *AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056*, the case of *AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 282* having confirmed that *AA* should still be followed.

14. The respondent did not file a Rule 24 response.

The hearing

15. The appellant attended the hearing unrepresented because he had been unable to obtain proof of asylum support to his solicitors for the purpose of legal aid.
16. In any event, Mr Clarke swiftly indicated that the first two grounds were made out for the following reasons. The judge had proceeded on the basis that the previous judge had found that the appellant was both non-Arab Darfuri and Nuba ethnicity. The appellant had originally claimed to be of Nuba ethnicity, and it was a new claim being advanced that he was of non-Arab Darfuri origin. The decision letter had stated that it was accepted that the appellant was of non-Arab Darfuri origins. It was likely that this concession would be withdrawn. In relation to ground two, Mr Clarke stated that the photographs clearly showed the appellant

speaking while holding a microphone and therefore the judge's findings at paragraph 11 were surprising. He added that the third ground was also made out as the judge's analysis of risk on return was flawed in light of the findings as to the appellant's sur place activities. Finally ground four was also made out as the judge's assessment did not take into consideration the findings as to the appellant's ethnicity. Mr Clarke suggested that the First-tier Tribunal was the most appropriate venue for any remaking.

17. In view of Mr Clarke's rightfully made concessions as to the grounds, I had no need to hear from the appellant.
18. At the end of the hearing, I announced that the decision of the First-tier Tribunal contained material errors of law and that it was set aside and that the rehearing of the appeal is to take place at the First-tier Tribunal.
19. Given the Secretary of State's rightly made concessions, there is little to add. There appears to be some confusion as to the appellant's ethnicity and Mr Clarke believed that the respondent's concession would be withdrawn. These matters can be resolved at the rehearing of the appeal.
20. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the confusion over the appellant's ethnicity. I consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and I therefore remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

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

The appeal is remitted, de novo, to the First-tier Tribunal to be heard by any judge except First-tier Tribunal Judge Sangha.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 March 2023