



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001450
First-tier Tribunal Nos:
PA/56511/2023
LP/00873/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 June 2024

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

'MAT' (SUDAN)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferrin, Counsel, instructed by Harrow Law Centre
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 28th May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION ON ERROR OF LAW

1. These written reasons reflect the full oral decision which we gave to the parties on the issue of whether the First-tier Tribunal erred in law. We reserved our decision on remaking.

The Judge's decision under challenge

2. The appellant challenged the decision of Judge French of the First-tier Tribunal, following a hearing on 1st March 2024. The respondent had refused the appellant's claim for refugee status but had granted him humanitarian protection, given the general conditions in Sudan, the appellant's country of origin. The appellant appealed the refusal of refugee status in what is sometimes called an 'upgrade appeal.'
3. At §3 of his decision, the Judge outlined the respondent's position. This was that first, since the formation of a transitional government in August 2019, there was no evidence that the Sudanese state was now targeting non-Arab Darfuris on the basis of their ethnicity. Second, the appellant had also claimed to fear persecution because his former partner, with whom he had had a relationship outside marriage, had become pregnant and her brother, a police officer, had then sought to persecute him. In response, the respondent said that this did not amount to state persecution on the basis of any protected characteristic; and there was no evidence that his claimed persecutors were still interested in him.
4. We then turn to the Judge's conclusions. The Judge had identified the following issues at §4: first, whether the respondent had proved that there had been a significant and durable improvement in the treatment of non-Arab Darfuris in Khartoum; and second, whether the appellant had a well-founded fear of persecution on the basis of being a member of a particular social group because he had had a relationship with a woman outside marriage, who had become pregnant. The respondent had placed reliance on a Country Policy and Information Note ('CPIN'): Non-Arab Darfuris, published in October 2021 which suggested that there were strong grounds supported by cogent evidence to depart from an assessment that all non-Arab Darfuris were likely to be at risk of persecution in Khartoum. In response, the appellant said that the CPIN had been overtaken by events only a few weeks later, when Sudan had become the subject of well-publicised fighting between warring militia. In relation to the claim of risk related to a former partner, the Judge recorded at §4 that the appellant no longer claimed to be a member of a particular social group.
5. The Judge's findings and conclusions were brief. At §§10(1) and (2), the Judge concluded that the appellant was not a credible witness and did not accept that the appellant had a pregnant girlfriend in Sudan; or that he had been threatened as a result; or that he was a member of a particular social group as a consequence. However, the Judge reiterated that in any event, the appellant no longer claimed that he was a member of a particular social group. At §10(3), the Judge stated:

"I accept the submission made by the Respondent that the situation for non-Arab Darfuris in Khartoum had improved as indicated in the CPIN dated 2/10/21. The Appellant's advocate had the opinion that that CPIN was 'obsolete' because there had been subsequent civil unrest in Sudan. However I do not share that opinion".
6. That comprised the entirety of the Judge's reasons.

The grounds of appeal and the grant of permission

7. In the grounds of appeal, the appellant raised a single ground that the Judge's reasons on the change in the situation in Sudan were simply inadequate. The Judge had agreed with the respondent's submissions but had given no reasons in support. While the Judge was not required to go through every item of evidence, see Azizi (succinct credibility findings; lies) [2024] UKUT 00065 (IAC), the parties at least needed to understand why they had lost. In particular, the Judge had fallen short of the guidance in R (SG (Iraq)) v SSHD [2012] EWCA Civ 940, namely the high threshold of very strong grounds supported by cogent evidence to depart from a country guidance case outlining the previous significant risks to those of Darfuri non-Arab ethnic origin, namely MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC).
8. Permission was granted by Judge Fisher on 8th April 2024.

The Hearing before us

The respondent's concession

9. Ms Ahmed began her submissions by making a narrow concession. She conceded that the Judge's reasons for concluding that there had been a durable change as set out in §10(3) were inadequate. She urged us to retain re-making in the Upper Tribunal, albeit it might be a case suitable for a country guidance case, on which we expressed no firm view. She did however urge us to consider the applicability of preserving the adverse findings on credibility, although as Ms Ferrin pointed out, the appellant no longer pursues a claim of a fear of persecution based on his relationship with a woman who became pregnant; and instead only pursues his appeal based on feared persecution because of ethnicity.

Decision - error of law

10. We regard Ms Ahmed's concession as realistically and properly made. The Judge's reasons were wholly deficient in explaining why the Judge reached the decision to depart from the previous Country Guidance case. We do not, however, regard it as appropriate to preserve the specific adverse credibility findings, not because we disagree or regard them as flawed in any way, but rather, as Ms Ferrin points out, that the only outstanding protection matter does not depend upon the appellant's credibility. We only therefore record that the Judge made significant adverse credibility findings which, although the appellant does not accept, he has not sought to appeal.

Retaining the remaking in the Upper Tribunal

11. Both representatives urged us to retain re-making in the Upper Tribunal. We refer to paragraph 7.2 of the Senior President's Practice Statement. This is not a case where either party has been deprived of a fair hearing. The issues are very narrow, as is the nature or extent of any judicial fact finding. The appellant's credibility is not relevant. The question is whether the respondent is able to adduce evidence capable of demonstrating that there has been a durable change, based on cogent evidence, constituting serious grounds for departing from the previous Country Guidance cases on the risk to non-Arab Darfuris. We therefore regarded it as appropriate to retain re-making in the Upper Tribunal.

Remaking the Decision in the appeal

12. In the premises, it is not disputed that the Appellant is a non-Arab Darfuri of Bargo ethnicity.
13. We are grateful for the assistance both representatives offered us in focusing on materials relevant to the single extant issue identified above.
14. Ms Ahmed placed reliance on three documents produced by the Respondent's Country Information Policy Unit (CIPU): 'Sudan: Non—Arab Darfuris' (version 5.0, October 2021), 'Sudan: Security situation' (version 1.0, June 2023), and 'Sudan: Humanitarian situation' (version 2.0, February 2024). She took us to relevant passages in amplification of the Respondent's case.
15. Ms Ferrin essentially relied upon the materials and arguments set out in the Skeleton Argument prepared in support of the challenge to the decision of the First-tier Tribunal.
16. Ms Ahmed referred to the Respondent's position as set out in the RFRL of 4 September 2023 - *"There is no evidence that since the formation of the transitional government in August 2019 that the state has targeting Darfuri's for arrest or other forms of harm on grounds of their ethnicity or place of origin. (Country Policy and Information Note Sudan: Non-Arab Darfuris, version 5.0, October 2012 sections 2.4.16, 7.1, 7.2.4, 7.2.9)"* - and its reiteration at paragraph 4 of the Respondent's Review of 28 January 2024. Further, insofar as the more recent CPINs made reference to the humanitarian situation she emphasised - in our view uncontroversially, but far from determinatively - that a humanitarian crisis did not inevitably denote a milieu of 'Refugee Convention persecution'.
17. With the assistance of the 'Caselaw' section of the October 2021 CPIN (paragraph 2.4.1 *et seq.*) Ms Ahmed traced the development of the relevant Country Guidance cases, and emphasised that whilst KAM (Nuba -return) Sudan CG [2020] UKUT 00269 (IAC) expressed itself as *"solely concerned with the position of individuals of Nuba ethnicity in Sudan... and not non-Arab Darfuris"*, an observation had been made as to the possible merits of reviewing the guidance in respect of non-Arab Darfuris.
18. Further to this, with reference to the passages in section 7 of the October 2021 CPIN report, as cited in the RFRL, Ms Ahmed invited us to consider that the evidence suggested a decrease in ethnic-based persecution, and the absence of specific references to targeting or ill-treatment by the State of non-Arab Darfuris in reports of Human Rights Watch and the US State Department in respect of 2019 and 2020, and optimistic observations made by an assistant researcher for HRW in May 2021 *"because of the peace process"*.
19. In this context and generally it was emphasised on behalf of the Respondent that this represented a significant change subsequent to the ousting of former president Al Bashir, under whose regime Darfuris were sometimes perceived to be sympathetic to, or directly linked to Darfuri armed opposition groups. The October 2021 CPIN report notes that the main Darfuri armed groups had signed the Juba Peace Agreement in October 2020 and *"joined the government"* (paragraph 2.4.12). Ms Ahmed further and similarly emphasised paragraphs 2.4.13, 2.4.16 and the summary at 2.4.18.
20. As regards developments since the October 2021 report, beyond the general observation that a deterioration in the humanitarian situation does not inevitably

signify a risk of persecution on ethnic grounds, Ms Ahmed sought to emphasise that a particular reference to ethnic-based conflict at paragraph 9.1.6 of the 2004 CPIN report did not seemingly involve non-Arab Darfuris.

21. Ms Ferrin repeated the submission made before the First-tier Tribunal: that the CPIN of October 2021 could not be relied upon as demonstrating durable change because it had been overtaken by events – specifically a military coup d’etat on 25 October 2021. She also highlighted the outbreak of conflict between the Rapid Support Forces and the Sudan Armed Forces that broke out on 15 April 2023, and the spreading of conflict in Sudan (e.g. see CPIN of February 2024 at paragraphs 12.1.1 and 3.1.1).
22. Ms Ferrin also emphasised at paragraph 11 of the Skeleton Argument passages in the materials that suggested an ‘ethnic component’ to the violence of the Rapid Support Forces since April 2023. On 5 September 2023 the United Nations Special Adviser on the Prevention of Genocide had expressed concerns over *“persistent and ongoing levels of identity-based violence in a number of states and regions in Sudan”* including Darfur. On 6 December 2023 the United States Secretary of State had issued a press statement referring to ethnic cleansing, *“horrific violence, death, and destruction across Sudan”* of which civilians had borne the brunt, *“echoes of the genocide that began almost 20 years ago in Darfur”*, and *“an explosion of targeted violence against some of the same survivors’ communities”*.
23. We recognise and acknowledge the optimistic developments that informed the Respondent’s position expressed in the October 2021 CPIN report, which in turn informed the position in the RFRL herein, and the primary basis of the submissions advanced before us by Ms Ahmad.
24. However, we must evaluate things as they stand at present. We are not tasked with considering whether the state of the evidential material in or about October 2021, prior to the coup of 25 October 2021, amounted to cogent evidence of very strong grounds of durable change. Instead, we must consider the whole sequence of events from the time of the issuing of the most recent Country Guidance decision on non-Arab Darfuris to the present; we must consider whether the evidence presently amounts to cogent evidence of very strong grounds of durable change. Looked at from that perspective, notwithstanding the positivity consequent upon the fall of the Al Bashir regime, it is readily apparent that the new government since collapsed, the peace process collapsed, and there was a return to widespread armed conflict with a significant ethnic element. It is manifestly the case that the situation in Sudan remains volatile, and the future unpredictable.
25. In all such circumstances, adopting the approach and test set out in the guidance in R (SG (Iraq)) v SSHD [2012] EWCA Civ 940 (*“very strong grounds supported by cogent evidence”* - as identified above in the discussion on error of law), we conclude that the respondent has failed to demonstrate that there has been a durable change sufficient to justify departing from the previous Country Guidance cases.
26. For the avoidance of any doubt, we have noted Ms Ahmed’s submissions in respect of the Appellant not claiming to have been a victim of persecution on ethnic grounds prior to his departure from Sudan in 2016, and the evidence suggesting that family members continued to reside in his home area in Sudan.

We do not think that these circumstances make any material difference: the Appellant's ethnicity being accepted, he is entitled to the benefit of the Country Guidance cases in the absence of there being any grounds for exclusion from the protection of the Refugee Convention. The availability of international surrogate protection is premised on risk; it is not necessary to have been a past victim to demonstrate current risk.

27. Accordingly, there being no issue as to the Appellant's ethnicity, and there being no issue raised in respect of exclusion, applying and following the Country Guidance case of MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC), as confirmed in AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 00282 (IAC), we conclude that the Appellant has established that he is at risk of persecution for a Refugee Convention reason in his country of nationality, and as such is entitled to international surrogate protection under the Refugee Convention. His appeal succeeds accordingly.

Notice of Decision

28. The Decision of the First-tier Tribunal contained a material error of law and is set aside.
29. We remake the decision in the appeal. The appeal is allowed on protection grounds.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

I Lewis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 June 2024

To the Respondent

Fee Award (*This is not part of the determination*)

The appeal has been allowed and in all the circumstances we make a full fee award.

J Keith

Judge of the Upper Tribunal *qua* Judge of the First-tier Tribunal
Immigration and Asylum Chamber

I Lewis

Deputy Judge of the Upper Tribunal *qua* Judge of the First-tier Tribunal
Immigration and Asylum Chamber

5 June 2024

