Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/06177/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 27th November 2018

Decision and Reasons Promulgated
On 23rd January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

A M
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Miss W Patel (Solicitor, LDB Solicitors)
For the Respondent: Mr Diwnycz (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the refusal of his asylum application was dismissed by First-tier Tribunal Judge Malik for the reasons given in the decision promulgated on the 25th of June 2018. It was accepted that the Appellant was a non-Arab Dafuri of the Berti Tribe but the Judge rejected the rest of the Appellant's account relating to events in Sudan.

2. Notwithstanding the country guidance case of AA (Non-Arab Darfuris-relocation) Sudan CG [2009] UKAIT 56 and MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC)the observation that non-Arab Darfuris must succeed in an international protection claim the Judge felt able to depart from the country guidance on the basis that the Appellant’s circumstances showed that he could relocate without risk in Khartoum. In doing so the Judge rejected the submissions of the

Appellant's representative that the Appellant would be at risk there for the reasons given in paragraph 32.

3. The Appellant was granted permission to appeal to the Upper Tribunal on the basis that it was arguable the Judge had erred in the approach taken to the country guidance cases. It was also argued that the Judge had not considered the evidence of Mr P Verney that educated Darfuris were increasingly at risk of adverse treatment. That his exit visa had expired and he had been in the UK would increase his risk. In the rule 24 response of the 14th of September 2018 the Secretary of State's position was that the Judge had clearly been aware of the country guidance cases but that there had been cogent evidence to justify departing from them and had in mind the high threshold needed for justification.

4. The submissions of both representatives are set out in the Record of Proceedings. Both representatives succinctly summarised their respective positions and maintained them relying on the grounds of application and grant and the rule 24 response.

5. The simple fact that a Judge has departed from a country guidance decision is not by itself an error of law. It is clear from the decision of SG (Iraq) [2012] EWCA Civ 940 that country guidance cases can be departed from if there is evidence to justify such a course of action. The Home Office relied in this appeal on one of the many Danish fact-finding missions that had provided evidence that suggested that things were not as bad as had been made out in MM.

6. The Judge assessed the Appellant's circumstances in Sudan on the basis of the evidence he gave and did not appear to place much if any weight on the Danish report. It is significant that the events that the Appellant relied on took place relatively recently, since the decision in MM, and the Judge's rejection of the Appellant's central credibility has not been challenged in the grounds.

7. The opinion of the expert, Mr Verney, had been given on evidence that arose before the case was decided in 2015, the Appellant's claim was based on events in late 2017 and as noted above it was rejected. The reasons for rejecting the credibility of the Appellant's case are set out in paragraph 27 of the decision and remain unchallenged.

8. Those findings then formed the basis for the Judge departing from previous country guidance as the Appellant's circumstances did not reflect the claimed increased risk for educated Berti. There is no evidence that the Appellant would be in a different position of other Sudanese returning having overstayed their visas. In the circumstances I am satisfied that the Judge had given sufficient reasons for departing from the country guidance cases relied on and that the decision did not contain an 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.

Signed: 

Dated: 11th December 2018

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.)

Fee Award

In dismissing this appeal I make no fee award.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 11th December 2018