



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

Appeal Number: PA/07033/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 22<sup>nd</sup> November 2019**

**Decision & Reasons  
Promulgated  
On 27<sup>th</sup> November 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**A M M (SUDAN)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Akram, Counsel instructed by Batley Law Ltd  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Sudan whose date of birth is recorded as 27<sup>th</sup> January 1995. He appealed the decision of the Secretary of State dated 24<sup>th</sup> May 2018 in which the Secretary of State refused to recognise the Appellant as a person in need of international protection. The Appellant appealed. His appeal was heard on 4<sup>th</sup> July 2018 by Judge of the First-tier Tribunal Dearden sitting at Bradford.

2. The primary facts upon which the Appellant relied are set out in the Decision and Reasons from paragraph 11 onwards, but in short there were two bases upon which the Appellant sought international protection. The first was that he had come to the attention of the authorities and that he had been arrested by the Sudanese National Security Service and ill-treated. He had been accused of supporting Darfuri nationals and supplying them with weapons to use against the Sudanese Security Services. The second limb of the Appellant's case was that as a member of the Berti tribe, without more he was at risk were he to be returned, though of course it was part of his case that in respect of the first limb his membership of the Berti tribe aggravated the situation for them.
3. Judge Dearden did not accept the Appellant's case other than his tribal affiliation. He went further and went on to say that even if he had been told the truth by the Appellant, which he found was not the case, he would still have dismissed the appeal because of the internal flight alternative which Judge Dearden found available to the Appellant. It was that aspect of the Appellant's appeal that had loomed large in the appeal before the Upper Tribunal.
4. Before the matter reached the Upper Tribunal, I should note that permission was granted by Judge Maller on 13<sup>th</sup> August 2018. It was noted, and indeed it was confirmed before me, that the primary findings of fact made by Judge Dearden were not the subject of appeal. The focus of appeal related to paragraph 33 of the Decision and Reasons of Judge Dearden who, on the face of his Decision and Reasons, saw himself departing from country guidance in the shape of **AA (CG) [2009] UKAIT 00056**. I set out paragraph 33 in full: it reads as follows:

"In my conclusion the Secretary of State has made out his assertion that the situation in Sudan has moved on since the determination in 2009 in **AA**. The Secretary of State relies on the Country Policy and Information Note for Sudan dated August 2017 which is sourced from the joint report of the Danish Immigration Service and the UK Home Office Fact Finding Missions dated February and March 2016. I am course [sic] wary of the Danish Immigration Service following difficulties with their Fact-Finding Mission to Eritrea. However, paragraph 9 of the skeleton argument provided details that there are 29 consulted sources which have resulted in the 2017 Country Policy Note. It would not help the brevity of this determination to cite the five bullet points referred to at paragraph 9 of the skeleton argument. I have to say that the bullet points appear to be of persuasive authority and to me indicate that there has been a sustained and markedly changed situation in Khartoum since the country guidance of **AA** was promulgated. I confirm again that I am reluctant to depart from the country guidance case, but in the particular circumstances of this case I feel obliged and able to do so".

5. This matter first came before me on 20 September 2019. I noted that at paragraph 28 of the Decision and Reasons Judge Dearden made very clear findings, which were not the subject of any appeal. He said:

“I have overall considered all the evidence in the round together. I remind myself of the low burden of proof upon the Appellant, but overall, I have concluded that the Appellant was not credible in the assertions which he makes. Whilst of course I accept that he is Sudanese and a member of the Berti tribe I do not accept that he has been arrested, detained, assaulted, or released on bail. If the Appellant fails to tell the truth about matters which are at the very heart of his asylum and related protection claims he fails to discharge even the low burden upon him to prove that he is of any interest to anyone if returned. On that basis the asylum and related protection appeals of the Appellant are dismissed.”

6. Judge Dearden then went on to explain the legal basis upon which he had proceeded (it is to be remembered that a judge has to start somewhere in their reasoning). He took as in his words “the basic position” as that set out in the case of **AA (CG) [2009] UKAIT 00056** in which it was held that all non-Arab Darfuris are at risk of persecution in Darfur and could not reasonably be expected to relocate elsewhere in Sudan. ***If that were the position still, then, it was agreed, this Appellant would have been entitled to succeed.*** The issue was whether the situation in the Appellant’s home country had changed such that he could internally relocate, but Judge Dearden did not leave matters at **AA**. He went on to recognise that the Upper Tribunal had considered the position of Sudanese nationals again in the case of **IM and AI (CG) [2016] UKUT 00188**. The guidance was no longer that a person without more who was non-Arab Darfuri was at risk. It was rather more nuanced and in the course of the submissions Mr Akram accepted that the country guidance position was **AA** as qualified by **IM and AI**. The head note in **IM and AI** which is taken from the substance of the appeal sets out various considerations to which a judge is to have regard and it is clear at paragraph 32 that Judge Dearden did have regard to the criteria applicable to a person such as the Appellant.
7. There is one issue at paragraph 32 that deserves mention and that is that Judge Dearden said:-

“I have already indicated that I do not as a matter of fact find that the Appellant was detained, but even if he was he seems to have been detained on the basis that he is a non-Arab Darfuri rather than for any other political reason”.

Clearly, Judge Dearden at that point was focused on the criteria within **IM and AI**, but Mr Akram invited me to find that Judge Dearden had left open the possibility that in fact the Appellant had been detained. I did not, for the avoidance of doubt, find that on a proper reading of Judge Dearden’s Decision and Reasons that point was open to the Appellant, and in any event, it was not a point taken in the grounds.

8. The question for me to resolve on 20 September 2019 was whether Judge Dearden departed from the country guidance? Clearly the case of **SG v The Secretary of State for the Home Department [2012] EWCA Civ**

**940** makes plain that there has to be cogent reasons for so doing. I indicated that in my view he had but was entitled to do so.

9. It is not now necessary for me to set out my reasoning, as expressed before promulgation of my Decision and Reasons following the hearing of 20 September 2019 because after that hearing but before promulgation, my attention was drawn to the case of **AAR & AA (Non-Arab Dafuris - return) Sudan [2019] UKUT 282**, which in short stated that **AA** remained the country guidance position.
10. By Notice dated 18 October 2019 I directed that the matter should be brought back before me so that further submissions could be made in the light of the case of **AAR & AA** to which neither party referred in the earlier hearing. I should say that I make no criticism of either representative. I too was not aware that this country guidance case had been published.
11. At the resumed hearing, Mr Diwnycz conceded that he could no longer resist the appeal. He invited me to find that Judge Dearden had erred in law and that the decision of the First-tier Tribunal should be remade such that the appeal in the first-tier Tribunal should be allowed. Mr Akram, unsurprisingly, did not oppose such a course.
12. I should say, for my part that the position taken by Mr Diwnycz, on the facts of this case and given the manner in which it had been argued, was quite proper and one with which I agreed.

### **Notice of Decision**

**BY CONSENT** the decision of the First-tier Tribunal contained a material error of law and is set aside. The decision of the First-tier Tribunal is remade such that the appeal is allowed.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 22 November 2019



Deputy Upper Tribunal Judge Zucker