



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

Appeal Number: PA/11023/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 17 October 2019**

**Decision & Reasons
Promulgated
On 13 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR E M I A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aziz, Lei Dat & Baig solicitors (Renshaw House)

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sudan born in 1974. He arrived in the UK on 18 March 2018 and claimed asylum the same day, on the basis that he is a member of the Berti tribe having been born in North Darfur, that he had been arrested twice in 2016 and 2018, and that he had a well-founded fear of persecution if he were returned to Sudan. His asylum application was refused in a decision dated 3 September 2018. The Appellant appealed against that decision. His appeal came before Judge of the First-

tier Tribunal Malik for hearing on 15 October 2018. In a decision and reasons promulgated on 26 October 2018, the judge dismissed the appeal.

2. Permission to appeal was sought in time on the basis that the judge had erred in law. Given that there was no dispute as to the Appellant's Darfuri ethnicity, the judge had departed from the country guidance cases of AA (Non-Arab Darfuris – relocation) Sudan CG [2009] UKAIT 0005 and MM (Darfuris) Sudan CG [2015] UKUT 00010. There had to be very strong grounds supported by cogent evidence to depart from a country guidance case and no cogent or good reasons had been provided in this case as the Judge's reasons were simply based on the Home Office Country of Origin Information Report.
3. Permission to appeal was granted on 20 November 2018.

Hearing

4. Prior to the hearing on 15 October 2019 the Appellant's representatives sent to the Respondent and the Tribunal a supplementary bundle which included a copy of a decision of the Upper Tribunal in AAR and AA (Non-Arab Darfuris – return) Sudan [2019] UKUT 00282 (IAC) promulgated on 7 August 2019 where the Upper Tribunal held:

“The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris etc.) [2009] and MM (Darfuris) [2015] requires revision. Those cases should still be followed”.

5. Mr Bates accepted in light of this new decision from the Upper Tribunal and in the absence of any further country information emanating from the Respondent's sources to contradict the position taken therein that the judge had erred materially in law.
6. The further skeleton argument contained in the Appellant's supplementary bundle asserted that in light of the country guidance and given the acceptance the Appellant would be at risk on return to Sudan due to his ethnicity and that there was no safe internal relocation alternative that the Appellant was entitled to refugee status on the basis of his ethnicity.

Decision and Reasons

7. Both parties accepted that in light of AAR (op cit) the correct course of action would be for the appeal to be allowed outright on the basis that the Appellant is a refugee. I so find that the Appellant would be at risk of persecution if returned to Sudan due to the fact that he is a non-Arab Darfuri of Berti ethnicity.

Notice of Decision

The appeal is allowed on refugee grounds.

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 Rebecca Chapman

Date 10 November 2019

Deputy Upper Tribunal Judge Chapman