



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

Appeal Number: PA/06121/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 19 October 2018**

**Decision & Reasons
Promulgated
On 5 November 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR A A A H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Patel, Lei Dat & Baig Solicitors

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

DECISION AND REASONS

1. The appellant has permission to challenge the decision of Judge Malik of the First-tier Tribunal (FtT) sent on 29 June 2018 allowing the appellant's appeal on humanitarian protection grounds, but failing to make any decision in respect of the appellant's asylum grounds.
2. It is unnecessary to set out the grounds in any detail especially since the respondent's Rule 24 notice concedes that the grounds are valid. The

simple facts are that the appellant claimed asylum; that this was refused by the respondent on 23 April 2018 on asylum and humanitarian protection grounds; and that the appellant's grounds of appeal included both asylum and humanitarian protection grounds. By virtue of the terms of the Qualification Directive, a decision-maker can only decide to grant humanitarian protection if satisfied an appellant does not qualify for refugee status. The judge gave no reason for concluding that the appellant did not qualify for refugee status. It would appear that the judge thought that because he did not believe the appellant's account of his family having been attacked by the Janjaweed, or of the Janjaweed kidnapping and detaining him, he could not qualify as a refugee. But on the basis of Tribunal country guidance (**MM (Darfuris) Sudan CG** [2015] UKUT 10 (IAC)) it was and is sufficient for persons to qualify as a refugee if appellants are non-Arab Darfuris. Given that the judge concluded at paragraph 27 that **AA** [the earlier CG case] and **MM** which gave guidance on international protection claims (not just humanitarian protection) "should not be departed from", in logic he should have allowed the appeal on asylum grounds and not addressed humanitarian protection.

Notice of Decision

3. For the above reasons I conclude that the judge materially erred in law and I set aside his decision.
4. As the respondent's Rule 24 response acknowledges, the only logical decision I can arrive at in re-making the decision is to allow the appellant's appeal on asylum grounds.
5. To summarise:
 - The decision of the FtT Judge is set aside for material error of law.
 - The decision I re-make is to allow the appellant's appeal on asylum 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

Date: 25 October 2018

H H Storey

Dr H H Storey
Judge of the Upper Tribunal