Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00393/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 August 2019	**On 22 August 2019**

Before

UPPER TRIBUNAL JUDGE WARR

Between

I M O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Muhzam (CB Solicitors)
For the Respondent: Miss Isherwood, Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sudan born on 29 November 1956. He appeals the decision of the respondent on 4 January 2019 to refuse his claim for protection. The appellant arrived clandestinely in this country on 6 July 2018 and was arrested concealed in a lorry. He stated that he had left Sudan on 2 August 2016 and had travelled through various countries before reaching the UK. He claimed asylum on his arrest and said he was a member of the Berti tribe in Sudan. He claimed he had been arrested and detained by Sudanese police officers while closing his bookshop which was near a university where a demonstration was taking place. He stated he

had been detained for two weeks and beaten and tortured. He had been released on conditions to report to the police station and act as an informant. He had left Sudan in breach of these conditions and feared persecution on return as a perceived supporter of the political opposition to the Sudanese Government.

2. A key feature in this case is that the Secretary of State did not accept the appellant's claim to have been a member of the Berti tribe. Furthermore it was not accepted that the appellant's claim to have been arrested and detained was made out. In paragraph 48 of the decision it was stated:

> "Even if your claim to be of Berti ethnicity were to be accepted, which it is not, for the reasons given below it is not accepted that you have a genuine subjective fear on return."

3. Reference was made to the country guidance cases of **AA (Non-Arab Darfuris – relocation) Sudan CG [2009] UKAIT 00056** and **MM (Darfuris) Sudan (CG) [2015] UKUT 10 (IAC)**. The respondent noted that **SG (Iraq) [2012] EWCA Civ 940** had made it clear at paragraph 47

> "That decision makers and Tribunal Judges are required to take country guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence are adduced, justifying their not doing so. To do otherwise will amount to an error of law."

4. The First-tier Judge accepted that the appellant was a member of the Berti tribe as claimed and that he had worked in a bookshop near the university from 2016 but rejected the appellant's account in other respects in the light of numerous inconsistencies. She did not accept the account of arrest and detention and found that the account he had given was not credible. The judge was also satisfied that there had been no adverse interest in the appellant's family by the Sudanese Authorities since he had left Sudan nor that he had in fact been politically active there or that he intended to be politically active on his return. The judge did not accept that the appellant had a genuinely held political view which would put him at risk if he were to express it in Sudan. Given his complete lack of political involvement in Sudan the judge concluded that he had been attending protests in London as a means of bolstering his asylum claim, rather than as a result of genuine political conviction. The judge also took into account the failure by the appellant to claim asylum in at least two safe countries before he claimed asylum in the United Kingdom.

5. Having concluded that the appellant had not given a true account, she considered whether he would be at risk as a member of the Berti tribe, taking into account the relevant country guidance in paragraph 13 of her decision. If the guidance was followed then the appellant as a member of the Berti tribe would succeed. The judge then went on to consider the respondent's argument about the country guidance and concluded her determination as follows:

> "14. However, the Respondent submitted that this was a case in which there are strong grounds supported by cogent evidence to justify a departure from the Country Guidance case law. The submission is supported by the

Respondent's Country Policy and Information Note: Non-Arab Darfuris August 2017. I considered the evidence contained within that document. I also considered the facts of this case: it is undisputed that the Appellant, a 62-year-old man, has lived in Khartoum undisturbed by the Sudanese authorities for over 56 years. He appears to have lived peacefully with his family throughout that time, making a living through first farming and then through his work in the bookshop. Although he is a member of a Darfuri tribe, he speaks Arabic and no longer has any particular links with that region. When he was in Sudan, the Appellant had no political involvement, nor did he engage in any activity which might have brought him to the attention of the Sudanese authorities. That undisputed evidence in combination with my finding that the Appellant's account of persecution was not credible, supported the contention that the risk of persecution does not necessarily attach to this Appellant, albeit he is a non-Arab Darfuri. In my judgment there are strong grounds to justify a departure from the country guidance here.

15. I considered whether the Appellant's activities in the United Kingdom may put him at risk of persecution on return to Sudan. The limited evidence before me was that the Secretary General of the Darfur Union in the United Kingdom and Northern Ireland had seen the Appellant at demonstrations in London on four separate days between December 2018 and March 2019. At the first three he appeared simply to be present, and at the fourth he was helping with the catering. There was no evidence before me to indicate whether the Appellant's presence might have been recorded by Sudanese intelligence operatives. There is no suggestion that the Appellant is a political organiser, or that he has an online presence. I was not satisfied that there is a reasonable likelihood that his attendance at the four events described has or will come to the attention of the Sudanese authorities. I was not satisfied that he is at risk of persecution as a result of his activities in the United Kingdom.

16. I considered the second ground of appeal, namely whether there is a real risk that the Appellant would suffer serious harm if he returns to Sudan.

17. I considered whether he is at risk of suffering serious harm on return because of his status as a returning asylum seeker. I had regard to the guidance in IM and AI (Risks – membership of Beja Tribe, Beja Congress and IEM) Sudan CG [2016] UKUT 00188 (IAC) in making my assessment.

18. Following the guidance in that case, I was satisfied that there is no risk to the Appellant simply because he is a returning asylum seeker. In IM and AI the guidance states:

> *'In order for a person to be at risk on return to Sudan there must be evidence known to the Sudanese authorities which implicates the claimant in activity which they are likely to perceive as a potential threat to the regime to the extent that, on return to Khartoum there is a risk to the claimant that he will be targeted by the authorities.*
>
> *…*
>
> *The decision maker is required to place the individual in the airport on return or back home in his community and assess how the authorities are likely to re-act on the strength of the information known to them about him.*

19. In his skeleton argument, Mr Madanhi referred to the Respondent's Country Policy and Information Note from August 2017 and also, at paragraph 17, quoted from a letter from Madeleine Crowther. I noted that the parts of those documents reproduced in the skeleton argument were concerned with the situation for non-Arab Darfuris *in Darfur* as opposed to elsewhere in Sudan. The Appellant's home is in Khartoum.

20. The letter is reproduced in full at page 126 of the Appellant's bundle. I noted some of the examples cited, particularly at page 130. However, particularly in light of the country guidance in IM and AI, I was not satisfied that there is a general risk to returning asylum seekers: each case has to be looked at individually, and so individual examples are not particularly helpful.

21. On my findings, I was satisfied that there is no information about the Appellant which might cause the Sudanese authorities to see him as a potential threat to the regime: he has lived an unassuming life with his family in Khartoum until he left Sudan in 2016. Although he is from the Berti tribe, there is nothing obviously singling him out as such: he told Mr Verney at para 121 that the only way the authorities would know he was Berti was from his accent.

22. In his report, Mr Verney referred to recent events in Sudan, and referred to a number of news reports about state violence against demonstrators. I acknowledged that there has been some increased violence in Sudan in recent months, but I was satisfied that that does not give rise to a risk to this Appellant if he should be returned: he is not in fact politically involved and would be unlikely to involve himself in demonstrations upon his return, given that he never involved himself in any such activity before he left Sudan. He is not a journalist, a doctor, or a student, all groups who appear from the recent material to be at risk of persecution in Sudan. At para 235 of his report, Mr Verney details 'the targeting of young Darfuris'. The Appellant is not a young man, and in my judgment unlikely to be seen in the same way as the groups described by Mr Verney in his report.

23. At para 258 of his report, Mr Verney states that 'in reality (the Sudanese authorities) take people into detention and maltreat them solely on the basis of their ethnic identity and the assumption they support the opposition'. However, none of the source material he produces in support of his report supports this particular statement. The articles produced speak mainly of the government response to demonstrations.

24. I was satisfied that the Appellant does not qualify for humanitarian protection, nor would there be a breach of his rights under Articles 2 and 3 ECHR if he were returned to Sudan.

25. I finally turned to the third ground of appeal, and considered whether returning the Appellant to Sudan would constitute a breach of his rights under article 8 ECHR. He has no family life in the United Kingdom: it was not in dispute that the Appellant's entire family remain in Sudan.

26. I therefore considered his right to private life, and whether if the Appellant were returned to Sudan there would be very significant obstacles to his integration there. Throughout his 62 years the Appellant has known very

little other than life in Sudan, and particularly in Khartoum. He has a family and a home there to which he can return. There are no obstacles to reintegration in this case.

27. Section 117B of the Nationality, Immigration and Asylum Act 2002 provides that the maintenance of effective immigration controls is in the public interest. I was satisfied that the Appellant did not meet the Immigration Rules. I concluded that there would be no disproportionate interference with the Appellant's private life if he were returned to Sudan. Additionally, there were no exceptional circumstances in this case which would mean there would be unjustifiably harsh consequences for the Appellant if he were returned to Sudan."

6. Accordingly the judge dismissed the appeal.

7. In the grounds of appeal there was no challenge to the factual findings of the First-tier Judge. Permission was granted however on the question of departure from the relevant country guidance. At the hearing Mr Muhzam relied on his skeleton argument and the grounds. It was noted that in the case of **IM and AI** referred to by the judge at paragraph 17 of the decision AI had claimed to be a member of the Berti tribe and there was no basis upon which the Tribunal could depart from previous country guidance in relation to **AI**. The evidence in the CPIN Report described a confused situation and was not sufficient to warrant departure from the country guidance. The appellant would be at risk because of his ethnicity and the decision was materially flawed in law and should be set aside.

8. Miss Isherwood submitted there was no material error. The Secretary of State had made it clear in the decision letter that he argued that the Tribunal should depart from country guidance. The judge had not erred in her decision. She had concluded that the appellant was from the Berti tribe and had lived in Khartoum but had rejected other aspects of his claim. She had not accepted that there had been any adverse interest in the appellant's family and the appellant had demonstrated no genuine political interests in the United Kingdom. She had referred to the case of **IM and AI** in paragraph 17 and had set out part of the guidance in that case. Paragraph 6 of the headnote stated that the evidence established that targeting was not random but the result of suspicion based upon information in the Authorities' possession, although it may be limited. In paragraph 7 it was stated that caution should be exercised when the claim is based on a single incident.

9. The appellant's claims, apart from his membership of the Berti tribe, had not been believed and the judge had been entitled to conclude as she had done in paragraphs 20 and 21 of the decision. The Home Office material had been properly sourced and the judge had to weigh up all the material before her. The grounds were no more than a disagreement.

10. In reply it was submitted that cogent evidence was required and the points relied on by the respondent in the decision were not properly sourced and it was submitted the country guidance should be followed and not departed from. The judge could not select which parts of **IM** she was to follow. There was a material error of law.

11. At the conclusion of the submissions I reserved my decision. In this case the issue is whether a departure from the country guidance was justified. It was argued in ground two that the decision was irrational. The judge had been invited by the respondent to find that there were strong grounds supported by cogent evidence to justify a departure from country guidance case law. Although she had accepted that the appellant was a member of the Berti tribe, his claim had been rejected as lacking credibility in other salient aspects. All the judge was left with were the points she looked at in paragraphs 14(ff). The judge considered references to the skeleton argument by the appellant's then representative in paragraph 19 of the decision, noting that the appellant's home was Khartoum, not Darfur.

12. It is submitted before me that the material in the Home Office CPIN simply painted a confused situation and was not sufficient to warrant departure from the country guidance. In my view the decision of the First-tier Judge was properly reasoned and she had in mind all the material before her including the CPIN, country guidance and the expert report. She was entitled to accept the invitation by the Home Office to depart from the country guidance on the facts of this case. As she was departing from country guidance what was said in **IM and AI** at paragraph 217 does not conflict with the result in this particular appeal. While I have carefully considered the submissions made on behalf of the appellant I do not find that salient material was overlooked or that the decision was irrational as claimed in the grounds. It is no light matter to establish irrationality.

13. For the reasons I have given there is no material error of law in the decision and this appeal is dismissed.

The First-tier Judge made an anonymity order which it is appropriate to continue.

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 their 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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date: 21 August 2019

G Warr, Judge of the Upper Tribunal