

Heard at: Field House  
On 5 November 2004

MM (Zaghawa – Risk on  
Return – internal Flight)  
Sudan [2005] UKIAT 00069

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

..09 March 2005

**Before**  
:

**Miss K Eshun (Vice President)**  
**Ms D K Gill (Vice President)**  
**Mr H G Jones MBE, JP**

**Between**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

### **Representation:**

For the Appellant: Ms A Weston, of Counsel, instructed by  
David Gray & Co  
For the Respondent: Mr C Trent, Home Office Presenting Officer.

### **DETERMINATION AND REASONS**

1. The appellant, a citizen of Sudan, born on 1 October 1986, appeals with leave of the Tribunal against the determination of an Adjudicator (Mrs N A Baird) dismissing his appeal against the decision of the respondent made on 10 October 2003 to refuse him asylum and to give directions for his removal from the United Kingdom as an illegal entrant.
2. The appellant's evidence is that he was from the Zaghawa tribe. He worked as a shepherd in Sudan. About a year and a

half before he came to the UK his uncle and paternal grandmother were killed by the Sudanese government. In around December 2002, he returned home from the market and found two people from the Arab tribes there. They beat him up with a leather strap and with a metal tipped arrow. They tied his hands together and forced him on to the back of a horse. He was taken to a place in the desert where he was told that he had to take care of their animals. He was not allowed to live in a tent but had to live with the animals. Sometimes he got food and he drank milk from the sheep. He was called a slave. He was kept by these people for seven or eight months. One day during a three day celebration of a wedding he managed to escape. He arrived at Karnoi where his home was but he did not go there as he could see that the whole of his village had been destroyed. He knew that his father had money on the land in a hole so he went and got this money and ran to Port Sudan. He went by lorry and the journey took about five days. In Port Sudan he met an agent who said he would help him. He gave the money to this man who assisted him to come to the United Kingdom. He feared to return to Sudan because of the Arab tribes.

3. The Secretary of State disputed that the appellant was sixteen years old when he was interviewed. The Secretary of State did however accept that the appellant may be a Sudanese citizen and that members of minority clans in Sudan may receive treatment from Arab clans which would bring them within the scope of the 1951 Convention. He did not accept that the appellant was forced into slavery or that he or his family was persecuted.
4. At the hearing, the Adjudicator had a medical report dated 18 February 2004 by Dr Wohlrab, the appellant's General Practitioner. At the time of Dr Wohlrab's report the appellant was admitted to Cherry Knowle Hospital on 16 February 2004 and was being treated with medication for depression. He was being seen by a child and adolescent psychiatrist. There was a further letter from Dr Wohlrab dated 22 March 2004 saying that he saw the appellant on 22 March and found him to be still suffering significantly from post-traumatic stress disorder. The appellant had told Dr Wohlrab that he had stopped taking the medication prescribed by the psychiatrist. Dr Wohlrab decided to prescribe vitamins and food supplements. Dr Wohlrab said in a previous letter that he was inclined to believe that the appellant had given his correct age.
5. The Adjudicator also had a letter dated 11 March 2004 from the city of Sunderland Social Services Department confirming the appellant to be visiting Gill Horne, a social worker on a regular basis. The Adjudicator also had a further report dated 9 December 2003 from a consultant clinical psychologist who said that the appellant was having difficulty sleeping. He

exhibited an elevated level of anxiety but not depression. She said that there was evidence of post-traumatic stress disorder too. She had organised for the appellant to see a consultant adolescent psychiatrist with a view to considering some anti-depressant medication.

6. The Adjudicator also had before her an expert report prepared by Peter Verne in November 2003. This report was specific to the appellant. Peter Verney claimed to be personally familiar with the Darfur region of Sudan and its people, having worked in the region for Save the Children in 1985 and 1986. He has maintained his interest in the area and done a lot of work in research.
7. The Adjudicator heard oral evidence from the appellant and from Gill Horne, the Social Worker.
8. The Adjudicator accepted that the appellant was only 17 and accepted his date of birth as 1 October 1986. She accepted that he was abducted as he claimed. She also accepted that he was able to escape and that he went home but lost touch with his parents. She did think, however, that there was an element of planning to leave rather than find his family and make the best of things in Sudan. She also accepted that he is of the Zaghawa tribe and that this tribe have had problems and suffer harassment and discrimination. She also accepted that many people from the appellant's clan had fled their home areas and are now displaced and that the expert report by Peter Verney was an accurate reflection of the situation.
9. The Adjudicator did not accept that the appellant was persecuted in the past. She did not accept that he would be at any more risk than the rest of his clan. Although they are clearly harassed and discriminated against, she did not accept that they are persecuted. She therefore did not accept that there is a reasonable likelihood that the appellant would be persecuted if he were returned to Sudan. If he did not feel safe in his home area he could relocate.
10. With reference to the medical evidence, she accepted that the appellant has had psychological problems but noted that he was not currently on medication because he stopped taking it because of stomach problems. According to the CIPU report access to mental health care in the primary care system is not available in Sudan and very few therapeutic drugs are obtainable. However, there are special programmes designed to meet the mental needs of refugees and children, supported by NGO's and UNICEF. Although she accepted that the appellant was exhibiting some symptoms of PTSD, she thought that if it were really bad he would be getting medication and counselling. The Adjudicator was not persuaded that his condition was so bad that he would not be

able to get proper treatment in Sudan. She did not think that the appellant's circumstances were exceptional. Having accepted that the appellant was only seventeen years of age, the Adjudicator hoped that he would be granted leave to remain in the UK until he attained the age of eighteen.

11. The grounds of appeal upon which leave was granted argued that the Adjudicator was wrong to find that the Zaghawa Tribe are not persecuted and was also wrong to maintain that the appellant was not subjected to persecution in Sudan. It was also argued that given that the Adjudicator found the appellant credible, the weight of the objective evidence clearly supports the proposition that he is reasonably likely to be at risk of persecution as a result of his ethnicity were he to be returned to Sudan.
12. Counsel argued that the flaw in the Adjudicator's determination was in her finding that the appellant was not persecuted in the past. She argued that no reasonable Adjudicator could reasonably say that what the appellant suffered in the past was not persecution. Counsel said that the appellant was a minor, who was kidnapped by the Arab tribes and used as a slave. The Adjudicator accepted that he is from the Zaghawa Tribe and suffered harassment and discrimination. The treatment, which the Adjudicator accepted the appellant suffered included enslavement by the Arab group and beaten regularly. That treatment was because he was a member of the Zaghawa Tribe. The Adjudicator accepted Peter Verney's report was accurate and accepted that it was consistent with what was going on in Darfur. In the light of that evidence, counsel argued that the Adjudicator was not entitled to find that the appellant was not persecuted in the past.
13. Mr Trent on the other hand argued that the Adjudicator looked at the situation and distinguished between discrimination, harassment and persecution. She accepted the cumulative effect of discrimination and harassment, amounted to persecution. However, her finding that the appellant was not persecuted in the past was a finding that was open to her in the light of the evidence that was before her.
14. After deliberating on the matter, the Tribunal decided that the Adjudicator made an error in law. We found that the treatment the appellant was subjected to in the past was enough to amount to persecution.
15. Counsel then argued that two issues arose in this case, firstly, the prospective risk the appellant is likely to face in the future and, secondly, whether it would be unduly harsh for him to relocate to another part of Sudan outside of Darfur.

16. Counsel relied on the report by Peter Verney and two letters from the UNHCR dated 18 May 2004 and 4 November 2004, both of which postdate the Adjudicator's determination.
17. Referring to the UNHCR letter of 18 May 2004, Counsel said that on return to Sudan the appellant would be at risk of being questioned particularly about his clan membership and where he comes from because of the government's plan for people in those regions. She said that there is hardship and lack of security in the camps. UNHCR in Khartoum is aware of some individuals who have been subjected to detention without trial on their return to Sudan. The length of detention is uncertain and international agencies, including the ICRC, do not have access to the detainees. Southern Sudanese are almost certain to face extreme hardship upon their return. They may be placed in camps for the internally displaced where they would likely be compelled to contend with harsh living conditions and physical insecurity. Recent reports according to the UNHCR indicate that settlements for the internally displaced are being demolished in and around Khartoum. UNHCR also states that Sudanese of non-Arab Darfurian background returning to the country face a heightened risk of scrutiny by the security apparatus. Internally displaced persons from Darfur also often face protection risks, including forced relocation and forced return. Counsel argued that there was a reasonable degree of likelihood that this would happen to the appellant.
18. Counsel also referred us to a report by Human Rights Watch. The report stated that as of early August 2004, aside from humanitarian access, there has been little improvement in the humanitarian and human rights conditions for the more than 1 million displaced persons in Darfur. The government plans to relocate many of the displaced communities to resettlement camps, "safe areas" or to force them to return to their village despite continuing insecurity raised new concerns of possible forced displacement. The report also states that the majority of displaced people remain in small and large towns under government control, where they are sometimes concentrated and confined in appalling conditions, preyed upon by the Janjaweed militias, who operate in near total impunity. The government's use of certain ethnic militias as a counter insurgency partner has highlighted a new ethnic and racial element to the dynamic conflict in the region and also polarised ethnic and racial identity in some communities in a way that is new for many Darfurians. Human Rights Watch also said that government plans to address the displaced civilians seem to involve two elements: the forced return of small numbers of communities to their original villages, and the forced resettlement of a much larger population of displaced civilians to new locations. Human Rights Watch received several communications from different locations in

West Darfur, for example, where tribal leaders have been harassed and intimidated to take their communities back to certain villages or new locations.

19. In light of that evidence, Counsel argued that a returnee in the appellant's position would be forced to return to the area from where he fled because of the government's plans.
20. Counsel then referred us to extracts from Peter Verney's report of 28 November 2003. Peter Verney states that in Darfur Zaghawa villages and individual villages have increasingly become targets for attack by pro-government Arab groups, who were ethnically cleansing the region. In Southern Sudan and now in Darfur the government of Sudan has tried to resolve conflicts whose deep causes lie in problems of discrimination and justice by condoning or ordering actions which have violated human rights.
21. Counsel referred us to the first addendum to Peter Verney's report of 22 October 2004 which deals with the IAT decision **UKIAT 00167** of 20 May 2004 which was a decision on risk on return of failed asylum seekers to Sudan. Mr Verney said that while official controls can be by-passed on exit, on arrival back in Sudan, returnees face a risk of questioning or more serious interrogation as they run the gauntlet of Sudanese Immigration Controls at Khartoum Airport. The outcome and attendant risk is influenced by numerous factors, including the person's documents, his known history, if any, his ethnic and linguistic characteristics and his political position with regard to the regime (whether real or imputed to him by the authorities because of racial or under prejudice). Counsel added that this is corroborated by Human Rights Watch in relation to ethnicity and ethnic polarisation within Darfur. In the light of that Addendum, Counsel argued that there is a prospect of risk to the appellant at the point of return and if he got into the country, he would be at risk in Darfur.
22. At this stage Mr Trent informed the Court that he was not going to argue that the appellant would be safe in Darfur.
23. Counsel said that in that case the appellant would not be safe if he relocated to Khartoum. This is because he will be forced to return to the outskirts of Khartoum according to government plans highlighted by Human Rights Watch.
24. Counsel then referred us to the second addendum to Peter Verney's report, which is dated 28 October 2004. Peter Verney said that extensive corroboration of the worsening situation and of the Sudanese government's command and control of the operation in Darfur has come from the highest levels of the UN and other non-Partisan bodies. He referred to the latest accounts of attacks on displaced people and to the

accounts of arrests of Western Sudanese in Khartoum and elsewhere outside Darfur. He said that even in the best of times, it is no simple matter to relocate inside Sudan, where the absence of infrastructure means that most people in any given place are from local tribes and the arrival of an outsider would attract the attention of the authorities. The social structure of the country is such that members of the Zaghawa would probably find it impossible to relocate to some other rural area without being noticed.

25. Counsel concluded that bearing in mind the appellant's age and particularly his vulnerability, and the objective situation, it would not be safe for the appellant to relocate within Sudan outside of the Darfur area. Conditions for displaced persons such as the appellant are very grave.
26. Mr Trent accepted that the appellant cannot return to his home area since he was persecuted there and given the conditions in Western Sudan.
27. He said that the appellant would be returned to Khartoum. The UNHCR letter of 4 November does not rule out returns. It calls for the exercise of extreme caution with respect to any potential returns to Sudan.
28. Referring to paragraph 8 of Peter Verney's second addendum, Mr Trent said that the report refers to numerous arrests of human rights defenders and lawyers. There is no suggestion that the appellant falls into any of those categories. Therefore the appellant would not be at risk on return to Sudan. Furthermore, he is from the West and not from Southern Sudan.
29. In reply, Counsel said that the UNHCR's letter of 4 November 2004 does not make any distinction between those who come from the West and those who come from the South. Southern Sudan is used to demarcate the Arabs and the dark-skinned non-Arabs. According to the UNHCR letter of 4 November 2004 those in Khartoum face forcible displacement. Because the appellant is a person of non-Arab appearance he would be at risk. The idea that there is a safe place for him to go is wrong because the government is forcing these displaced people back to Darfur.
30. With regard to the appellant's psychiatric condition, Counsel said that if the Court thought it relevant then she would ask the Court to take it into account when assessing risk to the appellant on return to Sudan.
31. Having found that the appellant was persecuted in the past in Darfur, the question we need to address is whether the appellant can safely relocate within Sudan and whether it

would be unduly harsh for him to do so. That consideration encompasses any risk the appellant might face in Khartoum, where he would be returned to.

32. Our attention was drawn to two letters from the UNHCR. Their first letter of 18 May 2004 is regarding "Return of Failed Asylum Seekers to Sudan". In principle UNHCR is not opposed to the return of failed asylum seekers to Sudan but urges all states to exercise extreme caution given the volatile nature of the situation in Sudan.
33. UNHCR said that the overall situation continues to be influenced by the civil war in Southern Sudan that has been raging since 1983, as a result of which some 4 million Sudanese are displaced within the country. Of these over 2 million live in precarious conditions in greater Khartoum, with some 80,000 in camps and the rest in squatter and settlement areas. The situation has been further exacerbated by the fighting in the Darfur region of Western Sudan. This conflict has been accompanied by severe human rights abuses against civilians and has led to an estimated one million Sudanese being forced to leave their homes.
34. With regard to the safety of returnees where asylum claims have been unsuccessful, UNHCR said that there were several sources of potential risk. One risk was the border decree of 28 February 1993. The Tribunal in AA found that there was no evidence that this decree existed. UNHCR Khartoum was aware of some individuals who have been subjected to detention without trial on their return to Sudan. However, the UNHCR does not identify the background, ethnicity or circumstances of these individuals. The lack of such information does not assist us in finding that there is a risk capable of amounting to persecution or ill-treatment which reaches the threshold of Article 3.
35. UNHCR said that Sudanese of "non-Arab" Darfurian background returning to the country face a heightened risk of scrutiny by the security apparatus. Additional danger is faced by those who are also students. Internally displaced persons from Darfur also often face protection risks, including forced relocation and forced return. We do not find that heightened risk of scrutiny is not enough to amount to persecution or breach of Article 3 of the ECHR. This appellant was not a student. We note that the UNHCR cited only one example of the authorities moving into a camp to evict its residents and forcefully relocating them to the outskirts of Khartoum. This one example does not show that evictions are being systematically carried out on all the camps and does not make it a real risk.



36. The second letter from the UNHCR is dated 4 November 2004. It states the UNHCR position on return of failed asylum seekers to Sudan. Again the UNHCR urges extreme caution. The information contained in this letter is similar to the information contained in their letter of 18 May 2004. The only additional information is that at least two camps housing IDPs in the Nyala area of South Darfur area were surrounded by units of the Sudanese army and police on Tuesday 4 November 2004. A proportion of this camp was forcibly relocated to another site north of Nyala town. As the information only relates to camps in South Darfur, the letter of 4 November 2004 is not of much help to us.
37. As to the conditions in the camps, the only evidence we have is that contained in the UNHCR letter of 18 May. The UNHCR describes the conditions as precarious. This limited information is insufficient to lead to a finding that the conditions in the camp amount to a breach of Article 3 or that the displaced persons in those camps are persecuted by reason of their ethnicity by the authorities who run camps.
38. We were also referred to the report by Human Rights Watch. This report refers to government plans to relocate many of the displaced communities to resettlement camps, 'safe areas' or to force them to return to their village despite continuing insecurity. There was no evidence before us to indicate that these plans are being implemented. Until they are, they are just plans and as such do not raise any Article 3 concerns.
39. We were also referred to the report by Peter Verney of 28 November 2003. In his conclusion Peter Verney said that his report dealt only with human rights violations committed by the Sudanese authorities outside the armed conflict areas of the south, namely the Darfur area. We note that it was in the light of that report and other objective evidence that the Adjudicator accepted the appellant's claims.
40. We then considered Peter Verney's first Addendum of 22 October 2004. In the first paragraph, he repeats that returnees run the gauntlet of Sudanese immigration controls at Khartoum airport. He said that the outcome and attendant risk is influenced by numerous factors, including the person's documents, his known history if any, his ethnic and linguistic characteristics and his political position with regard to the regime. He does not say what the outcome is nor does he identify the attendant risk.
41. In paragraphs 2 to 5 of the first Addendum Peter Verney analyses the Tribunal's decision in AA 00167. The analysis is accompanied by his own opinions about the behaviour of the Sudanese authorities. We do not attach any weight to his opinions. The remainder of the First Addendum deals with the

questioning of returnees at the airport. He goes on to state that the Sudanese authorities continue to arrest and maltreat the opposition. That may be so but our appellant has no connection to the opposition.

42. In his Second Addendum Peter Verney said that Darfur citizens are regarded as a security risk. Extensive corroboration of the worsening situation and of the Sudan government command and control of the operation has come from the highest levels of the UN and other non-partisan bodies. In particular he referred to the latest accounts of attacks on displaced people and to the accounts of arrest of western Sudanese in Khartoum and elsewhere outside Darfur. He said these reports have come from the UNHCR and other independent organisations. Western Sudanese in Khartoum were tear-gassed and shot trying to protest to the UN coordinator and to deliver information to him in early 2004. We do not find that this evidence paints a picture of systematic human rights abuses of displaced Darfurians in Khartoum.
43. In his report of 28 November 2003 Peter Verney commented on the risk the appellant is likely to face on return to Sudan. He said that the appellant's fear of the consequences of return is directly linked to the political situation in the Darfur region and the behaviour of the ruling regime in Sudan. There is a significant risk that the appellant would be subjected to hostile and abusive treatment, which is politically motivated (and tolerated) while influenced by his Zaghawa ethnicity. In all probability the appellant will face questioning on arrival at Khartoum airport, in view of the fact that he will be easily distinguishable as a western Sudanese (by appearance and accent) and a failed asylum seeker. Even if he was able to avoid or be cleared after interrogation at the airport, it is quite likely that he would be identified later within the country by local internal security forces and likely to be treated with suspicion and prejudice. Under the present regime, given the growing security problems in Darfur and the labelling of Zaghawa as troublemakers, this could easily lead to adverse treatment of the appellant.
44.
  - (i) We accept that the appellant is likely to be questioned at the airport on his return to Sudan in view of his ethnic and linguistic characteristics.
  - (ii) The objective information does not lead us to find that he is likely to be at risk of persecution or ill-treatment which reaches the threshold of Article 3 as a result of the questioning.
  - (iii) The appellant has no history of political opposition.

- (iv) The appellant was not a student and is therefore not likely to be at risk for this reason.
- (v) In the light of our findings, the numbers of displaced persons in Khartoum and the diversity of their ethnicity there is no particular reason for the appellant to be identified later within the country by local internal security forces and treated with suspicion and prejudice.

Accordingly we find that there is no real likelihood that the appellant will be at risk of persecution or treatment contrary to Article 3 were he to be returned to Khartoum.

46. We bear in mind that the appellant had just turned 18 when we heard the appeal. He was 15 years old when he was abducted and enslaved by Arab groups. The medical report from Dr Wohlrab of 22 March 2004 indicated that the appellant was suffering from PTSD. We acknowledge that we do not have an up-to-date medical report. Nevertheless we take into account that the appellant has lost his family. He will be returned to an IDP camp in Khartoum where he will have no support network. In my opinion these particular circumstances are such that it would make it unduly harsh to return the appellant to Sudan at the present time. His appeal is allowed for this reason only.

**Miss K Eshun  
Vice President**