Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10579/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 November 2018	**On 28 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

MOHAMMED [I]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R. Kotak, Counsel instructed by Pickup Scott, Solicitors
For the Respondent: Mr T. Melvin, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Sudan who was born on 18 May 2000. He is now 18 years old. He appeals against the determination of First-tier Tribunal Judge Andrew whose determination was promulgated on 14 September 2018. The principal issue in the appeal is whether the judge provided adequate reasons for departing from the Country Guidance set out in *AA (non-Arab Dafuris - relocation)* Sudan CG [2009] UKAIT

00056 (IAC). In *AA*, the Tribunal stated that all non-Arab from the Dafur region would be at real risk. The risk was not limited to their home area but was expressed to cover the entirety of Sudan.

2. It is common ground that the appellant is a non-Arab Dafuri.

3. The Judge declined to follow the Country Guidance and found that the appellant was note at risk in Khartoum, the place to which he would be returned. In paragraph 24 of her determination, the judge asks herself the question whether there were good reasons to depart from the Country Guidance. Thereafter, in paragraph 25, she stated by way of a conclusion:

> "It is clear from several sources that people of non-Arab Dafuri tribes in Khartoum are likely to face discrimination but not persecution unless they are perceived to be politically active against the regime."

4. Her reasons, limited as they are, are found in paragraphs 26 and 27. In paragraph 26, the Judge speaks of 'significant objective evidence in the appellant's Bundle' none of which details any harm or persecution to non-Arab Dafuris in Khartoum, absent any political activities. She does not identify that objective evidence or make any findings upon it.

5. The closest the Judge reaches in the provision of reasons is to note the contents of the August 2017 Country Policy and Information Note entitled '*Sudan: Non-Arab Dafuris* '. She then no more than lists paragraphs 2.3.9, 2.3.11, 2.3.15, 5.2.5, 5.2.8, 5.2.9, 5.2.12, 5.2.13, 7.1.3, 7.1.4, 7.1.6, 7.1.7 and 7.1.9. In doing so, she does not set out their contents. She makes no findings upon them. Her determination contains no analysis.

6. Having noted the three paragraphs mentioned in section 2 of the CPIN, above, she referred to the criticisms of the Chief Inspector about Home Office publications that combine (or confuse) statements of policy with country information. Having then found that section 2 is a statement of policy, it must follow that although she '*noted*' their contents she cannot have relied upon them. In paragraph 37 she states that the CPIN is in '*robust form*' suggesting that description alone justified her ability to place weight on it.

7. There are circumstances in which it is possible in a determination to advance a process of reasoning by referring to another document without quoting directly from the source. Needless to say, this leaves the reader unable to understand what that reasoning is unless he has the source material available to him. In this case, this would mean the Country Policy and Information Note. Sometimes a direct quotation from the

source is rendered unnecessary if it is properly summarised. Hence, for example it is permissible to refer to a ground of appeal without quoting from it extensively but by summarising its gist. At the hearing, I was provided with a copy of the Country Policy and Information Note without which I would have been entirely unable to understand what lay behind the judge's approach.

8. Bearing in mind the judge's self-direction that she was required to follow a Country Guidance case unless there were good reasons for departing from it, I do not consider that it is adequate to refer to certain passages in Home Office Country Policy and Information, to do no more than note their existence. There has to be a process of evaluation before the judge is permitted to conclude that the material is sufficient to depart from what is designed to be (albeit at that point in time when the Country Guidance was promulgated) an authoritative statement of risk.

9. It may be that the First-tier Tribunal Judge was aware of impending Country Guidance designed to shed light on what is clearly a divergence of view about the risk of harm on return to Khartoum as articulated by the Tribunal in 2009 and the current assessment made by the Home Office. However, I am not satisfied that this can justify the failure to provide adequate analysis.

10. I read the judge's determination as a two-stage process. First it deals with the risk on return to Khartoum. If such a risk exists, it is then pointless to consider relocation to Khartoum. If, however, the appellant is at risk in his home area but not in Khartoum, then the analysis has to proceed to a consideration of whether it is reasonable to relocate. Passages in the determination address both issues although the distinction between the two phases of the consideration is not entirely clear. I am, however, persuaded by Ms Kotak that the question of internal relocation and whether, in the circumstances of this appeal, it is reasonable to expect the appellant to relocate, has not been adequately considered. I was referred to a series of considerations that were advanced by Ms Kotak in her skeleton argument which the Judge overlooked. Consequently, were it to be necessary to make findings of the material facts on the issue of internal relocation, the exercise will have to be revisited.

11. I set aside the decision of the First-tier Tribunal Judge and direct that the hearing is to be re-made. I see no useful purpose in an attempt to re-make the decision until the further Country Guidance has been published. As I anticipate this may require additional findings of fact, I remit the appeal to the First-tier Tribunal.

12. At one stage in the argument, Ms Kodak suggested this appeal should be joined with those cases already before the Tribunal and which will form the further Country Guidance. I see nothing in this appeal which justifies its being joined to the others. All the more so, when those other cases may be at an advanced stage in preparation and, indeed, hearings having taken place.

13. I direct that the re-making of this appeal is to be held over until the publication of further Country Guidance. The parties, of course, have liberty to apply to re-instate the appeal before then but only if sound reasons are provided for doing so.

ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE
15 November 2018