



IAC-BH-PMP-V1

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

Appeal Number: AA/03913/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 23rd February 2016**

**Decision & Reasons Promulgated
On 4th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**MAS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Bhachu of Counsel instructed by Sentinel Solicitors
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion and to be consistent I shall continue to refer to the parties as they were before the First-tier Tribunal.

Background

2. On 20th November 2015 Judge of the First-tier Tribunal Reid gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal G Clarke who allowed the appeal on asylum grounds against the decision of the respondent to

refuse to grant asylum, humanitarian and human rights protection to the appellant, a female adult citizen of Sudan.

3. The grounds of application submitted that the judge had failed to have sufficient regard to the country guidance set out in *AY (Political parties, SCP, risk) Sudan CG* [2008] UKAIT 00050. That decision found that, in general, it would be difficult for ordinary members and supporters of the SCP or any other political party to establish a claim for asylum except where they were engaged in specific activities likely to bring them to the adverse attention of the authorities such as active and effective local democratic activity or support for particular human rights activities.
4. The grounds also pointed out that the judge had made negative credibility findings from paragraphs 74 to 89 of the decision rejecting the core of the appellant's account finding, in paragraph 85, that the appellant had engaged in low level activities although her younger brother was "much more involved and had been detained since January 2015". However, the judge found that the appellant was at risk on account of her brother's activities. The judge failed to give reasons, based on objective evidence, for finding that siblings of political activists were at risk when the appellant was only involved in low level activity herself.
5. In granting permission Judge Reid thought that the judge's consideration of the claim in the light of the country guidance did not adequately reflect the finding that the appellant was involved in low level political activities nor had the judge given adequate reason for the appellant's brother's activities putting her at risk.

Error on a Point of Law

6. At the commencement of the hearing Mr Parkinson pointed out that, in addition to the grounds, fresh country guidance was being prepared by the Tribunal. (This is, I note, under appeal references AA/04799/2011 and AA/00746/2013 where a decision was reserved on 4th November 2015). He also confirmed that the respondent relied upon the grounds which made it clear that the judge's findings were inconsistent with existing country guidance in *AY* which had found that only prominent politicians with a significant profile were at risk and there was no indication that family members of active politicians were targeted.
7. Ms Bhachu submitted that the judge had not challenged the appellant's claim to be associated with Al-Muatamr Al-Sha'bi (the People's Congress Party). My attention was drawn to paragraph 5 of her skeleton argument in which she referred to paragraph 50 of *AY* where, amongst other points, the Tribunal stated that the fact that an activist is involved in low or middle level political activity does not necessarily mean that they will not be at risk of persecution. She contended that the judge had based his finding on the fact that the appellant had been actively involved with the party, demonstrated and spoken with other women about policies. She also drew attention to the judge's conclusions in paragraph 93 which set out three reasons for finding that, despite low level activity, the appellant would be of interest to the Sudanese authority including her brother's activities and because of country background information post-dating the decision in *AY*. She argued that the core of the appellant's claims had been accepted.

Conclusions

8. At the end of the hearing and after I had given the matter some consideration, I announced that I was satisfied that the decision showed errors on points of law such that it should be re-made. I also concluded that, in accordance with paragraph 7.2(b) of the Practice Statements of the Senior President of Tribunals dated 25 September 2012 it would be appropriate for the matter to be reheard by the First-tier Tribunal sitting either at Nottingham or Stoke Centres. I now give my reasons for those conclusions.
9. It is clear, from the content of paragraphs 85 to 90, inclusive, of the decision that the judge made adverse credibility findings in relation to significant aspects of the appellant's claim to be at risk because of political activity. Whilst the judge was entitled to conclude that the appellant was, nevertheless, involved in low level political activity, the country guidance did not show that a person in that category, alone, would be at real risk of serious harm. Although paragraph 5 of Ms Bhachu's skeleton refers to paragraph 50 of AY, where the possibility that low or mid level political activities might put a person at risk, the remainder of that paragraph shows that the Tribunal assessed the real risk as involving those actively engaged in building up grassroots, democracy, working in support of human rights and involved in open criticism of the regime's core ideology and philosophy. The credibility findings in this case did not point to the appellant being involved in such activity.
10. Although the judge suggested, in paragraph 93, that the political situation in Sudan had been deteriorating, no reference is made to specific objective material which would enable a departure from the country guidance in AY. Further, the judge does not refer to any objective material to support the conclusion that family members of activists, such as the appellant's brother, would be at risk.
11. Thus, the findings of the judge are materially flawed such that the appeal should be heard again by the First-tier Tribunal where fresh findings of fact can be made and conclusions drawn in the light of country guidance. As it appears that fresh country guidance is on the point of release by the Upper Tribunal it is appropriate that the hearing of this appeal should be delayed pending the publication of that guidance.

Notice of Decision

The decision of the First-tier Tribunal shows material errors on points of law such that it is set aside and it is to be re-made by the First-tier Tribunal.

Anonymity

As the appeal involves the interests of a lone female, I make the following direction:

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly

identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

OTHER DIRECTIONS

1. The fresh hearing will take place either at the Stoke or Nottingham Hearing Centres on a date to be specified by the Resident Judge.
2. The rehearing of the appeal in the First-tier Tribunal should not take place until the Upper Tribunal has published further country guidance under references AA/04799/2011 and AA/00746/2013 unless such country guidance is inordinately delayed.
3. An Arabic interpreter will be required for the hearing which is estimated to take three hours.

Signed

Date

Deputy Upper Tribunal Judge Garratt