



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

Appeal Number: PA/09765/2017

THE IMMIGRATION ACTS

Heard at Birmingham

On 22 November 2019

**Decision & Reasons
Promulgated
On 16 January 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MUSTAFA [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Islam, Fountain solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 1 January 1993 and claims to be a citizen of Sudan. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 25 September 2017 refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 4 December 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Permission to appeal to the Upper Tribunal had been granted as long ago as 14 March 2018. Thereafter, the appeal appears to have been stayed behind the new country guidance case, *AAR & AA (non-Arab Darfuris – return) Sudan* [2019] UKUT 282 (IAC) which was eventually reported in September 2019. On the basis of that decision, the appellant, if he is a non-Arab Darfuri, may be entitled to international protection.
3. However, the appeal remains deeply problematic. I am very grateful to Mr Mills, who appeared for the Secretary of State and who provided me with a copy of his letter under Rule 24 dated 15 November 2019. In this letter, Mr Mills draws attention to the fact that the appellant has never claimed to be a non-Arab Darfuri. Moreover, it appears that both the First-tier Tribunal and the parties to the appeal have throughout misunderstood the nature of the appellant's ethnicity. The appellant has claimed throughout to be a Nubian, a tribe which originates from the north part of Sudan and which, the appellant claims, was 'exiled' from Egypt in the 1960s during the construction of the Aswan High Dam. Contrary to assumptions made by the parties and the Tribunal, Nubians are not synonymous with the Nuba tribe who live in the hills of southern Sudan. To complicate matters, in his appeal statement of October 2017, the appellant claims that he is from the Nubi tribe.
4. Mr Mills submits that, given the judge's findings that the appellant had never been detained or ill treated, that the Sudanese authorities have no interest in him and that he is not a non-Arab Darfuri, there is no real risk to him upon return to Sudan. Consequently, he submits that, if the Upper Tribunal remakes the decision, the appeal against the Secretary of State's decision should be dismissed.
5. There is rational force behind Mr Mills's argument. However, my primary concern is to ensure that the appellant is given a fair hearing of his appeal. For the reasons articulated by Mr Mills, neither the parties nor the First-tier Tribunal have addressed the appeal on the basis of the appellant's correct tribal identity. To that extent, he has hitherto not enjoyed a fair hearing or proper determination of his appeal. Given that the First-tier Tribunal decision is based upon a fundamental misunderstanding of the facts, I find that the only proper course of action is for this appeal to be returned to the First-tier Tribunal for that Tribunal to remake the decision on the basis of the correct facts. Mr Mills submitted that the refusal letter at [25] contains a typographical error where it refers to the appellant being from the 'Nuba tribe', a claim which he has never advanced. If one were to ignore that error, Mr Mills submitted that there was no need for the Secretary of State to serve a supplemental or replacement refusal letter.

That is a matter for the Secretary of State. However, **I direct the Secretary of State to file with the First-tier Tribunal and serve on the appellant and his representatives a further copy of Mr Mills's letter of 15 November 2019 forthwith.** I record that Mr Islam, who appeared for the appellant before the Upper Tribunal at the initial hearing, did not seek to dispute any of the contents of that letter. It is, therefore, vitally important that the letter is brought to the attention of the next Tribunal. **Both parties may adduce additional evidence provided copies of any documentary evidence, including witness statements, are sent to the First-tier Tribunal and to the other party no less than 10 days prior to the next hearing.** For the avoidance of doubt, the decision of the FTT is set aside in its entirety

Notice of Decision

The decision of the First-tier Tribunal promulgated on 4 December 2017 are set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision at or following a hearing de novo. **The attention of the parties is drawn to the directions set out in paragraph [5] above.**

Signed

Date 31 December 2019

Upper Tribunal Judge Lane