



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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SUDAN

IAA reference: IAA19/06543

Date and time of decision: 9 May 2019 09:09:00

B Mericourt, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Sudanese national. On 19 May 2017 he lodged an application for a Temporary Protection Visa (TPV). In a decision dated 2 April 2019 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.
2. The delegate was satisfied the applicant is a Sudanese national from the Aranga tribe who was born in Port Sudan. His parents and [some] siblings live in Port Sudan and [other] siblings live in Khartoum. She was not satisfied his home region was Darfur or he had resided or has any links with Darfur or that he would be identified as or suspected of coming from Darfur. She accepted he had been detained once by the authorities in January 2010, interrogated and physically mistreated. However, the delegate considered this incident occurred at a time of general unrest and as nothing had happened to the applicant in the following three years she concluded that he was not of adverse interest to the Sudanese authorities for reasons of his ethnicity / tribal group, imputed political opinion or any other reason. She found that he did not have a well-founded fear of persecution and there was no real chance or real risk he would suffer serious or significant harm if he returned to Sudan now or in the reasonably foreseeable future.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received a submission from the applicant on 12 April 2019. To the extent that this engaged in argument with the delegate's decision based on information which was before the delegate, I have had regard to it. The applicant stated that he had conspicuous marks on his [Body Part 1] which confirm that he belongs to the Aranga tribe. He was branded with these marks as a child by his grandmother. These marks would enable the government to recognise he belongs to the African tribes. He did not provide an explanation about why he did not provide this new information to the delegate before she made her decision. However, given the markings on his [Body Part 1] appear to be very visible and the delegate had a face-to-face interview with the applicant, I am prepared to accept he did not think it necessary to point them out to her. As the marks support his claim that his Darfuri origin would be easily visibly identified I consider there are exceptional circumstances to justify consideration of this information.
5. I obtained recent country information that was not before the delegate and is new information about non-Arab Darfuris in Sudan.<sup>1</sup> Whilst the delegate was satisfied the applicant is a member of the Aranga tribe which originates in Darfur she stated there was no evidence before her that the applicant would be perceived to be Darfuri and did not refer to recent country information related to such a claim. I have accepted the applicant may be

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<sup>1</sup> UK Home Office, "Country Policy and Information Note – Sudan: Non-Arab Darfuri", v.3.0, 28 September 2018, OG9EF767949

perceived to be from Darfur and I am required to consider the most recent country information relating to a class of persons of which the applicant is a member in making an appropriate assessment of an applicant's claim. I am therefore satisfied there are exceptional circumstances to justify considering this new information.

### **Applicant's claims for protection**

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6. The applicant's claims can be summarised as follows:
- The applicant fears harm for reasons of his ethnicity as a Sudanese of African descent who is a member of the Aranga<sup>2</sup> tribe. His skin colour and [Body Part 1] scars identify him visibly as a person of African descent from Darfur and as a member of the Aranga tribe;
  - Due to his membership of the Darfuri Aranga tribe he is imputed with a political opinion that is in opposition to the government and therefore vulnerable to detention and torture or execution;
  - He constantly experienced harassment, verbal abuse and discrimination in the community, particularly in finding employment and was harassed and threatened by Sudanese authorities including police and security forces and members of the Janjaweed, an armed militia group supported by the government;
  - He was detained on one occasion in 2010 for 5 days, interrogated, beaten and injured on the soles of his feet. He was released after his brother paid a bribe to officials;
  - His maternal uncle and friend who were also members of his tribe, were killed in El Geneina by members of the Janjaweed; and
  - He fears harm returning as a failed asylum seeker; and
  - He fears he will be harmed as a consequence of the generalised violence in Sudan, particularly in Darfur.

### **Factual findings**

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7. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Arabic and has submitted his original Sudanese Certificate of Individual record together with an English translation. I accept the applicant's nationality and identity are as claimed and find Sudan to be the receiving country for the purpose of the application. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Sudan and I am satisfied he does not: s.36(3).
8. I am satisfied the applicant departed Sudan lawfully as the holder of a genuine valid passport and that his passport was taken from him by the Indonesian people smuggler.

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<sup>2</sup> Aranga is also spelled Erenga. As the applicant has chosen to use the spelling Aranga and this is also used by the UK Home Office I am also using this spelling. The Aranga are identified by the UK Home Office and Danish Immigration Service as a non-Arab tribe from Darfur.

## Refugee assessment

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9. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### Well-founded fear of persecution

10. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
11. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.<sup>3</sup>
12. The applicant was born in Port Sudan. He stated that his parents were born in Darfur but moved to Port Sudan before his birth. His parents [and a number of siblings] reside in Port Sudan and [other siblings] live in Khartoum. His father is retired and had previously been employed as a [Occupation 1]. The applicant undertook compulsory military training himself for [number of] days in Port Sudan. He completed [number] years of school education and [number of] years part-time studies in [specified subject].
13. The applicant worked as a [Occupation 2] for an [Country 1] organisation from May 2009 to February 2010 due to his [skills]. In May 2010 he worked in his uncle’s [business]. He claims he was unable to gain other employment due to the discrimination he experienced as a Sudanese of African descent which is obvious from his dark complexion.
14. The applicant claims to be a member of the Aranga tribe which originates in Darfur. He said this tribe is perceived by the Sudanese government and the Jangaweed (an armed militia supported by the government) as being in opposition to the government. The applicant himself has never been involved in politics in Sudan or in Australia and said that in his case, he is imputed with an adverse political opinion because he is from a Darfuri non-Arab tribe.
15. The applicant was fairly general in his description of customs and other characteristics that are unique to the Aranga tribe. He only speaks Arabic (the dominant language in Sudan)

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<sup>3</sup> *Chan v MIEA*, (1989) 169 CLR 379 at 389.

himself and does not speak a tribal language. In his submission to the IAA he stated the conspicuous marks on his [Body Part 1] that were branded by his grandmother when he was a child would enable the government to easily recognise he belongs to an African tribe and he would be an easy target as a consequence. I accept that the applicant's physical appearance would identify him as of African tribal descent, but there is no information before me to suggest that members of the Aranga tribe are visibly distinct from other African tribes originating in Darfur.

16. At his entry interview in December 2012 the applicant stated he left Sudan "because as someone from Darfur I am being harassed and I cannot practice my rights. I have no chance of work and the Government authorities threaten us too much." He later said the Aranga tribe opposes the government and (therefore) the government suppress the people of the tribe. When asked if police or security organisations impacted on his day-to-day life the applicant stated that being from Darfur there was a lot of discrimination against him. For example, he could not get a job and police would stop him at checkpoints and ask for his ID but not stop anyone else. He did not wish to return to Sudan as he had experienced too much harassment and "could be put in jail without an end".
17. Also at his entry interview the applicant described an incident when he had been detained in June or August 2008 for five days when the Darfuri opposition entered Khartoum where he was trying to make a living. After the authorities kicked the opposition out of Khartoum they looked for anyone not carrying documents and detained him. In his written statement lodged with his application for protection dated 13 July 2017 the applicant described in detail an incident in [2008] when he was arrested and detained by police and members of the National Intelligence and Security Services (NISS) for not having an identity card with him. He was detained and interrogated in Khartoum prison for about five days. He was given no food or water for the first two days, beaten and tortured. He had injuries to his [Body Part 2] as a result of being hit with a [water hose] and he now has scars on his [Body Part 3] and [Body Part 2]. He believes that having no ID was a pretext for his arrest and it was simply his ethnicity and the fact that he was from Darfur that aroused the authorities' suspicion. He was accused of supporting the opposition. After five days his brother brought his National Identity card to the prison and he was released. He was stopped again in 2009 by the Jangaweed for not having his identity card and assaulted. He was harassed in 2010 when travelling to El Geneina and again in 2011 when members of the Janjaweed took all his goods when he was working in the market and threatened him.
18. In his written statement the applicant also said his family's farmland was confiscated in Darfur by Sudanese authorities and treated members of his tribe as supporters of the rebels. He himself has "never acted to oppose the government" and has never been interested in politics in Sudan. In 2006 and 2007 militias killed the head of the Aranga tribe and his son. He believes at least 2000 members of his tribe have been killed by government supported militia. His grandfather, maternal uncle and other members of his extended family have been killed by the government and Jangaweed militia groups. In about May 2012 his close friend was shot in front of him.
19. At his protection interview in March 2019 the applicant said that he was detained and arrested in January 2010 in Khartoum. His description of his arrest and beating was much the same as in his written statement. He stated that he got the year wrong at his entry interview because he was tired and confused and the result of the beatings on his head meant that he sometimes got things confused or forgot things.

20. I had regard to the applicant's written statement in which he said that he was detained and beaten in [2008]. Country information indicates there were reports in 2008 and 2009 of widespread arrests (numbering in the 1000s) of non-Arab Darfuris in Khartoum by the state following an attack on the capital by the Darfuri rebel group, Justice and Equality Movement (JEM), in May 2008. The UK Home Office – Danish Immigration Service Fact Finding Mission (UK-DIS FFM) report states that "Sources noted at that time widespread security operations in Khartoum took place, which were often based on the skin colour and ethnicity of a person".<sup>4</sup> This would support the applicant's earlier statements that his arrest and detention occurred in 2008 or possibly 2009 not 2010 as he claimed at his protection interview. Moreover, in his application form he stated that he resided in Khartoum between February 2009 and November 2009 when he went to El Geneina to look for work. At his entry interview he stated he lived in Port Sudan until 2009 while he undertook [classes] for three years after he left school. He then lived and worked in El Geneina. This is different from his evidence at his protection interview in which he stated he only lived in Khartoum for two months.
21. Despite the discrepancy in the dates, the applicant's evidence has been otherwise relatively consistent. I accept the applicant made a mistake in dates of the incident in which he was arrested at his entry interview and consider, given the rest of his educational, work and address history that he left Port Sudan and went to Khartoum to look for work at some time in mid to late 2009 and this is when he was arrested and detained for five days. I accept this incident occurred in the context of the security operations in Khartoum at that time following the attack by JEM in Khartoum. I accept that after his recovery from the injuries he sustained during his detention, the applicant went to El Geneina to stay with his uncle and look for work. He was successful in obtaining a job as a [Occupation 2] for an [Country 1] organisation for about six months and then worked with his uncle in his [business]. I accept that on one occasion in 2011 when working in the market, he was threatened by a member of the Janjaweed militia and his goods were stolen. I consider this was an opportunistic crime and that his identity as a non-Arab played a role in his being targeted at that time and in that location.
22. I accept that the applicant planned to leave Sudan for some years due to the discrimination he experienced as an identifiable Darfuri and he remained in Sudan for about three years after he was arrested in 2009 in order to save sufficient funds to leave. I accept the applicant's evidence that nothing happened to him in that period with the exception of the incident in the market in 2011, although he constantly experienced harassment and discrimination from police, and members of the NISS and he was concerned about intimidation from members of the Janjaweed after the incident in 2011 and after witnessing other incidents in which his friends and members of his extended family in Darfur were killed by Janjaweed militia. I accept the applicant's evidence that he has never been involved with rebel groups or anti-government political activities himself.
23. Based on the above findings I am not satisfied the applicant had or has an adverse profile with Sudanese authorities including the police or NISS, for reasons of his imputed or actual political opinion or imputed political activities. I accept that he suffered some discrimination as an identifiable non-Arab Darfuri and this resulted in his arrest and detention probably in 2009, but that he has otherwise not come to the adverse attention of Sudanese authorities for reasons of his imputed or actual political opinion.

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<sup>4</sup> UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

24. At the time of the applicant's arrest and detention in 2009 country information supports his claim that those of African descent were arrested by the NISS in security operations. This suggests he came to the adverse attention of authorities at that time for reasons of his ethnicity. The applicant was released after his brother came to the prison with his national identity documents and possibly paying a bribe. Although I accept he has been harassed since then I am satisfied he has not been arrested, detained or suffered serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act, during the three years he remained in Sudan after the incident in 2009.
25. I also have had regard to the applicant's evidence about his immediate family members in Port Sudan or Khartoum. I accept they experience discrimination and occasional harassment due to their identity as non-Arab Darfuris, however, I do not consider there is any information before me to suggest that have been seriously harmed for reasons of their ethnicity or imputed or actual political opinions or for any other reason.
26. The applicant stated that he was able to obtain a passport in his own name and a valid exit visa. In his written statement dated 13 September 2013 the applicant made no mention of having any difficulty leaving Sudan. DFAT reports that in order to obtain a Sudanese passport, an individual must present their birth certificate, national identity card and provide a guarantor confirming their identity. In late 2009, Sudan began issuing machine-readable passports which include some sophisticated security features, including a microchip containing the holder's details.<sup>5</sup>
27. The Department of Foreign Affairs and Trade (DFAT) also reports that individuals are required to obtain an 'Exit Visa' in order to leave the country. This requirement has been used to restrict the travel of some high-profile individuals, especially those who were of political or security interest.<sup>6</sup> NISS has a significant presence at the airport and reviews documentation of all people leaving and entering Sudan.<sup>7</sup> DFAT assesses that an individual would come to the attention of the authorities if they did not leave Sudan with a valid 'Exit Visa' or were of specific interest to the authorities.<sup>8</sup>
28. In his written statement dated 13 October 2017 he stated "I left Khartoum airport with some difficulty (unspecified) and I paid money to leave the country in order to leave Sudan safely and without delay". At his protection interview in March 2019 he said he had to pay a bribe to both obtain his passport and leave the airport. DFAT reports there is a high level of corruption in Sudan and given the discrimination by officials against people identified as Darfuri I accept the applicant was asked to pay bribes to enable him to obtain both his passport and exit visa and to leave the country.
29. However, based on the applicant's evidence that he applied and was granted a passport in his own name using genuine and valid identification documents in 2012, I am satisfied the passport was a valid passport. As he was issued an exit visa this suggests he was not of adverse interest to the authorities at the time he made his application for that visa. As discussed above, I am not satisfied that the applicant was of adverse interest to the authorities prior to his departure for reasons of his imputed political opinion or imputed

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<sup>5</sup> UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

<sup>6</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, p.6, CIS38A8012704

<sup>7</sup> Ibid

<sup>8</sup> Ibid

political activities or for any other reason. Whilst I accept the applicant may have paid a bribe to leave Sudan because authorities discriminate against those of evident non-Arab appearance, I am satisfied that he departed legally and without any particular difficulty.

30. I accept the applicant as a person of African descent who may be identifiable as being a member of a Darfuri tribal group and who does not have any formal qualifications, has suffered discrimination, particularly in finding employment. I accept that he experienced harassment such as being stopped at check-points and being asked to show his ID papers when others were not and that on one occasion in Darfur he was threatened and his goods were taken by members of the Jangaweed in the market. I accept he may have had to pay bribes in order to secure his passport and smooth departure due to corruption, discrimination and harassment on the part of Sudanese officials. Given I am satisfied the applicant suffered discrimination and harassment for reasons of his ethnicity I have given consideration as to whether such discrimination and harassment meets the standard of 'serious harm'.
31. DFAT reports that Sudan is home to hundreds of ethnic and sub-ethnic groups, speaking a multitude of languages. Arabic is the dominant and official language and sources suggest that Arabs account for 70% of the population.<sup>9</sup> Ethnically motivated inter-tribal discrimination and violence has been historically common in Sudan largely due to disputes over land, access to resources, migration and tribal rivalries.<sup>10</sup> DFAT refers to Minority Rights Group International which identifies the non-Arab groups of Fur, Zaghawa and Massalit from Darfur and Nuba from South Kordofan as facing the greatest risk of being deliberately persecuted or discriminated against on the basis of their ethnicity.<sup>11</sup>
32. The available country evidence does not indicate that all Darfuris face discrimination, harassment and human rights abuses that amount to serious harm or persecution. The UK Home Office concluded that while there is discrimination in accessing public services, the evidence does not establish that it, in general, by its nature and repetition amounts to persecution or serious harm.<sup>12</sup>
33. The UK Upper Tribunal found that each case involving non-Arab Darfuri applicants needs to be considered on its facts, taking into account a person's individual circumstances, profile and activities. "The problem that the evidence presents is that whilst the categories of those potentially at risk are legion, it is apparent that not all those falling into a particular category are at risk. It is not enough, therefore, to be a journalist or a student because not all members of these groups are at risk. So, too, with ethnic or tribal classification. Not all non-Arabs are at risk; nor all black Africans are at risk notwithstanding the unchallenged evidence that they are members of the various tribes associated with this group. Not all those from the troubled regions of Darfur, Southern Kordofan or the Blue Nile are at risk. Nor are all those who have been arrested and detained".<sup>13</sup>
34. Country information indicates that in general non-Arab tribal groups do experience discrimination, harassment and are socio-economically marginalised. They face obstacles because of their origins in accessing public services, employment and ID

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<sup>9</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, p.6, CIS38A8012704

<sup>10</sup> Ibid p.11

<sup>11</sup> Ibid.

<sup>12</sup> UK Home Office, "Country Policy and Information Note – Sudan: Non-Arab Darfuri", v.3.0, 28 September 2018, OG9EF767949

<sup>13</sup> Ibid.



documentation.<sup>14</sup> The UK Home Office – Danish Immigration Service Fact Finding Mission (UK-DIS FFM) report of September 2016 is based on a range of sources and states that several sources indicated that persons from Darfur would likely find it difficult to secure skilled employment or enter into certain qualified professions or sectors especially within the public sector. It also pointed out that adverse economic conditions and the general shortage of jobs in Sudan is an additional factor. Those with a lack of formal education mostly worked in the informal sector. Those from the Darfuri African tribes were more likely to experience employment discrimination.<sup>15</sup>

35. However, I had regard to the fact the applicant was able to work as a [Occupation 2] as a result of his reasonable level of [language] competency and as a [Occupation 3] in his uncle's business. At his entry interview he stated that he made plans to come to Australia about three or four years before his departure and saved for the costs of his trip over this period. There is no information before me that the discrimination the applicant suffered is such that it resulted in denial of his capacity to earn a livelihood of any kind, where the denial threatened the applicant's capacity to subsist, or that it resulted in such significant economic hardship that threatened his capacity to subsist. There is no information before me that the applicant was denied access to basic services as he received [number] years of schooling and he has not claimed he was denied access to health or other services. He made reference to three of his brothers who have obtained professional qualifications in [Discipline 1], [Discipline 2] and [Discipline 3] which suggests they have not been denied access to higher education, although he also reported they were only able to obtain low-paying jobs.
36. DFAT also assesses in its 2016 country report on Sudan that arbitrary arrest and detention are commonly used by the government, (including the NISS), particularly against individuals that are or perceived to be outspokenly critical of the government.<sup>16</sup> I am satisfied the applicant does not have such a profile.
37. I am satisfied the applicant is visibly recognisable as a person of African (non-Arab) descent. I accept he is a member of the non-Arab, Aranga tribe which originates in Darfur. I am satisfied that he lived almost his entire life in Port Sudan and, more recently Khartoum and that his family members live in these locations. I consider the applicant's home region is Port Sudan and therefore if he returns it will be to Port Sudan or Khartoum. Although I accept the applicant has extended family living in Darfur, given he has lived most of his life in Port Sudan, I am not satisfied that Darfur is his home region. I therefore have assessed the applicant's claims on the basis that he will return to Port Sudan or Khartoum where his immediate family members reside.
38. DFAT reports that since the mid-1980s there has been armed conflict between government forces and rebel groups linked to the Fur, Massalit and Zaghawa tribes located in Darfur although incidents of formal armed conflict have decreased.<sup>17</sup> The UK Home Office concluded that Non-Arab Darfuris who are situated in Darfur may be suspected of having connections to

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<sup>14</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704; UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

<sup>15</sup> UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

<sup>16</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, p.22, CIS38A8012704

<sup>17</sup> Ibid

rebel groups in Darfur and therefore may be targeted by the Sudanese authorities or militia groups.<sup>18</sup> I have found that the applicant's home region is not Darfur and his only links to Darfur are his tribal origin and some members of his extended family. I had regard to the fact he moved to Darfur in late 2009 or 2010 and lived there for only two years.

39. DFAT assesses that there is a risk that non-Arab groups such as the Massalit from Darfur may suffer persecution or discrimination based on their ethnicity, including outside of Darfur but does not identify the Aranga as such a group.<sup>19</sup> DFAT concluded that individuals from Darfur could safely relocate to Khartoum, depending on their individual circumstances.<sup>20</sup> There is no country information before me that indicate members of the Aranga tribe have been specifically targeted either in Darfur or in other regions of Sudan.
40. Overall DFAT assesses that Darfuris in Khartoum face a moderate risk of discrimination and violence on the basis of their ethnicity and their actual or perceived support for or association with rebel groups<sup>21</sup>. Darfuris who have or are perceived to be associated with an armed rebel group or criticise or challenge the government, including student activists, civil society or political activists, are likely to be of adverse interest to the authorities. However, in the applicant's case, although he has claimed to have been accused of being in opposition to the government solely for reasons of his ethnicity, he has not himself been involved in any political activities or claimed to have criticised or challenged the government. His own evidence is that he was arrested in 2009 (2010 according to his account at his protection interview) for reasons of his ethnicity and was not arrested, detained or harmed after his release from detention five days later.
41. In conclusion, I accept the applicant has suffered discrimination, harassment and some intimidation for reasons of his ethnicity and identity as a Darfuri of African descent. Based on the applicant's relatively consistent evidence and supporting country information about events in Sudan I accept he was arrested, detained and harmed in 2009 and that the reason for his arrest was based on his skin colour and ethnicity. However, I also consider this was a result of particular events occurring in Khartoum at that time. I have had regard to the fact that although the applicant has been harassed and intimidated by Sudanese authorities and members of the Jangaweed militia since then, he was not arrested, detained or seriously harmed after this particular incident for reasons of his ethnicity or for any other reason.
42. I am therefore satisfied there is no real chance the applicant will suffer serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act, for reasons of his race, ethnicity, actual or imputed political opinion or membership of a particular social group, that is, non-Arab Darfuris if he returns to his home region or Khartoum now or in the reasonably foreseeable future.

*Returned failed asylum seeker*

43. In 2016, the Upper Tribunal of the UK Immigration and Asylum Chamber found that there was no risk of persecution for failed asylum seekers who return to Sudan solely for reasons of

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<sup>18</sup> UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

<sup>19</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704

<sup>20</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704

<sup>21</sup> Ibid

having sought protection.<sup>22</sup> The UK Home Office 2017 report on returned asylum seekers noted that in September 2016 the British Embassy reported that neither the Embassy nor its international partners were aware of substantiated cases of returnees, including failed asylum seekers, being mistreated on return to Sudan.<sup>23</sup> The UK-DIS FFM report of 2016 was the result of a fact-finding mission using a number of credible sources including both international organisations and human rights groups. It states that a number of sources reported that returnees who had a political profile may be thoroughly questioned and/or arrested at Khartoum International Airport.<sup>24</sup> People who would be likely to be of interest to the authorities would include being of previous adverse interest to the authorities, having a record of contact with Sudanese opposition groups outside Sudan or having attracted the attention of the authorities during time overseas including through engagement with opposition groups within the diaspora.<sup>25</sup> In the applicant's case I have found that he had no political or otherwise adverse profile with the Sudanese authorities at the time of his departure. There is no information before me that the applicant has had any contact with opposition groups whilst he has been outside Sudan. I am therefore satisfied there is no real chance the applicant would be a person of interest to the Sudanese authorities on his return.

44. According to the 2016 UK-DIS FFM report, long-term residence abroad would not in itself be a risk factor.<sup>26</sup> The report noted that several sources from Western countries noted there are established diaspora communities living overseas and it would not be a problem for Sudanese citizens returning after travelling in Western countries.<sup>27</sup> Moreover, the UK Home Office report cited several sources as stating that travel using emergency travel documents would not in itself be a risk factor.<sup>28</sup>
45. I accept the applicant may have some difficulties returning to Sudan due to his economic circumstances, lack of higher education and skills and the lack of financial support provided for effective reintegration into Sudanese society. However, I am satisfied that any discrimination or difficulties he may experience reintegrating into Sudanese society does not amount to serious harm, having regard to the extensive examples of serious harm in s.5J(5). Based on the above country information and my findings I am satisfied there is no real chance the applicant will suffer serious harm for reasons of his membership of a particular social group, that is failed asylum seekers who have sought protection in a Western country.

#### *Generalised violence in Sudan*

46. I accept the applicant's concerns about the security situation in Sudan, particularly in Darfur, and he fears returning to Sudan for reasons of generalised violence (although he mainly expressed his fear about what was happening in Darfur and his links to Darfur by virtue of his tribal identity). Various sources referred to in this decision confirm the relatively poor security situation in Sudan. The main geographic areas of concern are Darfur and the Two States. However, according to the most recent UK Home Office report and DFAT, various

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<sup>22</sup> UK Home Office, "Country Information and Guidance: Sudan: Failed asylum seekers", 9 August 2016, OGD7C848D61

<sup>23</sup> UK Home Office, "Country Policy and Information Note – Sudan: Rejected asylum seekers", 1 August 2017, OG6E7028845

<sup>24</sup> UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

<sup>25</sup> UK Home Office, "Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum: Joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi Conducted February – March 2016", 31 August 2016, OGD7C848D82

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> UK Home Office, "Country Policy and Information Note – Sudan: Rejected asylum seekers", 1 August 2017, OG6E7028845

international organisations and human rights and humanitarian organisations in their most recent reports from 2016 to 2018 also confirm that Khartoum is relatively stable.<sup>29</sup>

47. Whilst I accept there is some generalised violence in Greater Khartoum and possibly in Port Sudan, although there is no country information before me specifically about this area, I do not consider that it is at such a level, scope or frequency that the applicant would face a real chance of serious harm as a civilian with no political profile if he returns to live in Greater Khartoum or Port Sudan. He has never had a significant profile in the community and as a low profile civilian I find the chance that he would suffer serious harm in generalised, insurgent or criminal violence is remote. On a separate and independent basis, in terms of generalised violence the applicant may suffer would also not be for the essential and significant reasons of his race, nationality, religion, political opinion or membership of a particular social group but rather as a consequence of the ongoing general insecurity as it impacts Sudan overall and therefore s.5J(1)(a) and 5J(4)(a) of the Act are not satisfied.

#### *Cumulative consideration of claims*

48. In considering the applicant's claims cumulatively, I have accepted he is of African (non-Arab) descent and Aranga tribal ethnicity and that he is readily identifiable as such for reasons of his physical appearance. I am satisfied his only links to Darfur other than his tribal origin is some members of his extended family. I have found that his home region is Port Sudan and he also has immediate family in Khartoum and that if he returns it will be to these areas.. I accept he may experience some harassment and discrimination, particularly in employment for reasons of his ethnicity but do not accept this amounts to serious harm having regard to the extensive examples of serious harm in s.5J(5). I do not accept he was of adverse interest to the Sudanese authorities prior to his departure for reasons of his imputed political opinion or imputed political activities or for any other reason. I am satisfied the applicant has no adverse political profile for reasons of his African descent, membership of the Argana tribe or location in Sudan. I am satisfied the applicant does not have a well-founded fear of persecution for the reasons in s.5J(1)(a) if he returns to Sudan now or in the reasonably foreseeable future. I am satisfied that, as a low profile civilian, there is only a remote chance he will be seriously harmed as a consequence of generalised violence if he returns to his home areas of Port Sudan or Greater Khartoum.
49. Having regard to all the applicant's specific circumstances in the context of the country information about the current situation in Sudan, I am not satisfied that there is a real chance of the applicant being seriously harmed by the Sudanese authorities, Jangaweed militia or by any other group or person. I am not satisfied that any of the treatment I accept he may experience will amount to serious harm when considered cumulatively if he returns now or in the reasonably foreseeable future.

#### **Refugee: conclusion**

50. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

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<sup>29</sup> UK Home Office, "Country Policy and Information Note – Sudan: Non-Arab Darfuri", v.3.0, 28 September 2018, p.34, OG9EF767949; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, pp.11-12, CIS38A8012704

## Complementary protection assessment

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51. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

### Real risk of significant harm

52. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person
  - the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
53. Real chance and real risk involve the same standard.<sup>30</sup>
54. I accept the applicant may suffer some discrimination and harassment as an identifiable member of a non-Arab Darfuri tribe due to his visual appearance. However, I consider any discrimination he may experience does not amount to significant harm as defined in s.36(2A). Based on the applicant's own evidence I am satisfied he has never been involved in rebel activities or with rebel groups, or engaged in anti-government political activity. I am therefore satisfied the applicant was of no adverse interest to the authorities for reasons of his actual or imputed political opinion. I have found that on the one occasion the applicant suffered significant harm in 2009 this was a consequence of particular events in Khartoum and the fact security forces targeted people on the basis of their ethnicity, skin colour and appearance at that time. I have had regard to the fact that after his detention of five days he was released and for the following three years he was not arrested or detained and nor did he suffer significant harm although he did suffer harassment and discrimination. I accept the applicant may be identified as a failed asylum seeker who sought protection in a Western country on his return. Although I accept he may be questioned on his return about the reasons for his departure and lengthy absence, I am not satisfied he will be detained, arrested or killed on his return for reasons of his Darfuri ethnicity, previous detention nearly 10 years ago or because he sought asylum in a Western country. I am satisfied any questioning he undergoes on his return does not amount to significant harm as defined in s.36(2A).
55. Considering the treatment I have accepted the applicant will experience as a whole, I am not satisfied that it cumulatively amounts to significant harm. Nor am I satisfied that there is a real risk that the applicant will suffer significant harm based on the cumulative effect of his circumstances and profile if he returns to Sudan now or in the reasonably foreseeable future.

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<sup>30</sup> *MIAC v SZQRB* (2013) 210 FCR 505

**Complementary protection: conclusion**

56. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
  - (c) that is not inconsistent with Article 7 of the Covenant; or
  - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or



- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### 5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### 5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### 36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.