



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SUDAN

IAA reference: IAA18/06117

Date and time of decision: 30 January 2019 09:05:00

K Allen, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be a non-Arab Darfuri man from Geneina (also known as Al-Junaynah) in West Darfur who also resided in Khartoum in the Sudan. On 8 November 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 7 December 2018 a delegate of Minister for Immigration (the delegate) made a decision to refuse to grant the visa on the basis that the applicant was not owed protection.

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. On 21 December 2018 the applicant's representative provided the IAA with a written submission, country information and a statement prepared by the applicant.
5. The submission contains legal argument in response to the delegate's decision. I have had regard to those parts of the submission. The submission also makes reference to new country information from UNICEF with figures about displaced Darfuris. This information pre-dates the delegate's decision, and I consider that it could have been provided to the delegate before the decision was made, particularly as the applicant had legal representation throughout the application process. I also consider that the applicant provided other country information and has not given any reason as to why this particular information was not provided earlier. I am also not satisfied that the report contains any credible personal information. I am not satisfied that the requirements of s.473DD(b) are met. I am also not satisfied that exceptional circumstances exist to justify considering the new information.
6. Attached to the submission were nine pieces of country information, including reports from NGO's and news articles. I am not satisfied that any of the information provided post-dates the delegate's decision and as such, for the reasons outlined above, I consider that it could have been provided to the delegate before the decision was made. I am satisfied that none of the following reports contain credible personal information and as such I have not had regard to them in this decision, noting that neither of the limbs of s.473DD(b) of the Act are met: January 2017 Country Summary - Sudan by Human Rights Watch; the December 2016 and the November 2017 reports of the OHCHR about IDPs in Darfur and humanitarian needs; the May 2008 report from Brookings on IDPs in Darfur: Taking Stock; an undated and uncited document about tribes in the Sudan; and a February 2016 report from the New York Times about the Sudanese government's "scorched earth" tactics. Further, the articles particularly relate to the situation in Darfur and I already have information before me about the situation in Darfur further, I have not accepted that Darfur is where the applicant habitually resided prior to his departure for Australia and I do not consider that the applicant is likely to return to Darfur. I am not satisfied that exceptional circumstances exist to justify considering the new information.
7. The 2015 document "Inside Sudan's War-Torn Darfur" is a freelance photographer's documentation of the humanitarian crisis; the February 2016 news article from the New York Times "Don't forget Darfur" is an opinion piece about the crisis in Darfur; and the January 2016 news article from The Guardian "Why is the world blind to the fresh threat of genocide in

Darfur?” contains commentary about the response from the international community to the genocide in Darfur. As noted above, I have reliable and recent information about the situation in Darfur before me including from government sources, and I have not accepted that Darfur is where the applicant habitually resided prior to his departure for Australia and I do not accept that the applicant is likely to return to Darfur. I am not satisfied that there are exceptional circumstances to justify considering the new information.

8. The applicant made a statement which reiterates his claims for protection and to which I have had regard. It also contains additional detail and clarification about those claims, some of which amounts to new information. The new information includes detail about how his family escaped the Janjaweed in Darfur, how his relatives paid for his education, conditions in Khartoum when he went there to study in 2008/2009, more detail about his role in the student protests and concerns that he is easily recognisable as a non-Arab Darfuri based on his features, image, identity and name. I am satisfied that the applicant had the opportunity to make his claims in full on a number of occasions at the primary stage of the application process and he had advice and representation. I consider that the new information that the applicant has provided does not change or significantly add to his claims or refer to any change of circumstances either in relation to himself or the conditions in the Sudan which would constitute exceptional circumstances. I have considered whether there are any, and I am not satisfied that there are exceptional circumstances to justify considering the new information.
9. I have also considered the recent guidance by the United Kingdom (UK) Home Office on Sudan, “Country Policy and Information Note Sudan: Return of unsuccessful asylum seekers” published in July 2018. This contains current information about the return process for the class of people who are forced to return to the Sudan after failing to seek asylum. It provides more detail and more recent information than that contained in the current DFAT report on the Sudan which was before, and relied upon by, the delegate. It is also referred to in the Home Office, “Country Policy and Information Note Sudan: Non-Arab Darfuri” report of 28 September 2018 which was before the delegate and the applicant. I am satisfied there are exceptional circumstances to justify considering this new information.

Applicant’s claims for protection

10. The applicant’s claims can be summarised as follows:
 - He was born on [date] into [Tribe 1] in Geneina, the capital of West Darfur. His parents and most of his siblings remain in West Darfur. The Janjaweed stole his father’s livestock and his family have to take refuge at times to escape the Janjaweed when they attack nearby camps.
 - In 2008 he went to Omdurman (adjacent to North Khartoum) to study [specified discipline] at [Institution 1]. He was awarded his qualification [in] September 2011.
 - Between 2011 and 2012 he worked at a [market] selling [specified goods] but was subject to constant discrimination and harassment by police because of his ethnicity.
 - In December 2012 he participated in an anti-government demonstration in the central bus station area of Khartoum known as Jackson Square, over the death of four Darfuri students in early December 2012 after they protested the Government’s tuition fee policy. He was one of the team leaders calling his friends to join in the rally and showing them where to go. In Jackson Square, many students were arrested or injured as the police used tear gas, fired shots and beat people to disperse the protest. He was beaten by the police as they were chasing him and his friends.

- After the demonstration, the police started to look for those who organised and participated in those rallies. Some Darfuri people were interrogated and they confessed that he was one of the organisers although he was only a helper.
- A week later he took a bus to Geneina to see his family but he could not stay in Geneina safely or support his family there.
- In order to save his life and make money to support himself and his family, he went to [Town 1] in North Darfur and worked [at a specified location]. The [workplace] belonged to [Tribe 2] first. There was dispute between [Tribe 2] and [Tribe 3] and [Tribe 3] kicked him and others [out] as they wanted to use their own tribal people.
- He then returned to Khartoum where he worked in another market, evading the authorities, and made arrangements to travel to Australia.
- He fears returning to the Sudan for the following reasons: He will be arrested by the police because of 'organising' the December 2012 protests; he will be killed by the Janjaweed if he goes back to his home village; and he is unable to return to the [specified workplace] where there is tribal unrest.
- He cannot relocate within the Sudan because he is a non-Arab Darfuri and this is evident by his skin colour. The genocide is focused mainly on black African communities and people in Darfur. Sudan's President Omar al-Bashir is accused of organizing war crimes and crimes against humanity by the International Criminal Court (ICC). There is no safe place for a civilian like him whose country's leader is a murderer.

Factual findings

Identity

11. The applicant claims he was born in [year] into [Tribe 1] in Geneina the capital of West Darfur. His parents and most of his siblings remain in West Darfur where they live in fear of the Janjaweed militia. In support of his claimed identity he has provided his Sudanese Birth Certificate and translation, his Sudanese Citizenship Certificate and translation, a Certificate of [his academic qualifications], issued by [Institution 1] [in] September 2011 and an academic transcript. The applicant provided a comprehensive and consistent account of his life in the Sudan, including his family history and the political situation. Country information indicates that there are many non-Arab tribes in Darfur. The largest non-Arab Darfuri tribes are the Fur, Zaghawa, and Massalit. Other tribes include the Meidob, Dajo, Berti, Kanein, Mima, Bargo, Barno, Gimir, Tama, Mararit, Fellata, Jebel, Sambat and Tunjur¹. I accept that the applicant is a member of [Tribe 1], a national of the Sudan and that the Sudan is the receiving country.

Life in Darfur

12. Since his arrival in Australia the applicant has consistently claimed that he came to Australia to earn money but he mainly he came for his safety. He has maintained that the Janjaweed stole his father's livestock and his family have to take refuge at times to escape the Janjaweed since the attacks commenced in 2003. He claims the family is large and poor and cannot afford to relocate to another part of the Sudan. Consequently, they pooled their resources so that he could travel to Khartoum and obtain an education. He left Darfur to attend college in 2008. He

¹ United Kingdom (UK) Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, 1.2.1

claims he returned to Darfur to his family home for a week at the end of 2012 after the student protests in Khartoum, but that he could not remain there safely and support his family. He claims that the bus to his hometown carried a number of Darfuris and the driver evaded police by taking by-roads and paying bribes at checkpoints.

13. Country information about the conflict in Darfur reports that, beginning in 1987, three successive armed conflicts occurred in Darfur, mainly between the Government (and associated militias, often referred to as the Janjaweed, who were armed by the Government) and rebel groups linked to the Fur, Massalit and Zaghawa tribes such as the Justice and Equality Movement (JEM) and Sudan Liberation Movement². The most serious conflict, known as the 'Third Rebellion', started in 2003 and led to President Bashir's indictment to the ICC. It caused an estimated 298,000 deaths, 80 per cent due to disease and malnutrition and 20 per cent as a direct result of violence³. The conflict in the region has caused large-scale and long-term displacement, with the UN estimating that there are around 2 million internally displaced persons registered in camps in Darfur out of a total estimated population of 7.5 million⁴. The consequences of the conflict, displacement, under-development and environmental degradation means that many people are dependent on humanitarian assistance. Insecurity and government restrictions continue to limit access to IDPs and the provision of humanitarian services⁵.
14. The applicant's account of life in the Darfur Province was compelling and consistent with country information about the conflict and I accept the applicant's claim that his family was exposed to danger and hardship in Darfur and that is why they sent the applicant to Khartoum. I also accept that he attempted to return to Darfur in 2012 after the student protests but was unable to earn a living or feel safe there due to the on-going conflict.

Life in Khartoum

15. The applicant has provided a consistent account and supporting documentary evidence that from 2008 until September 2011 he went to Khartoum to study [specified discipline] at [Institution 1] and that after completing his studies he remained in the Khartoum area selling [specified goods] in [a] market until the student demonstrations in December 2012. He returned to Khartoum in 2013 after spending January in Geneina and [Town 1] and he resided in Khartoum until his departure in May 2013. He claims that 2008 was a difficult time to be a Darfuri in Khartoum because government forces were targeting members of the JEM, a Sudanese opposition group founded by Khalil Ibrahim, which attacked Khartoum. The applicant claimed that the bus he travelled in to the capital was intercepted and searched at checkpoints and he was assaulted and harassed. During the conflict in Khartoum he remained in hiding at his [relative]'s house in Omdurman but later learned how to live in Khartoum coping with the constant discrimination and harassment. Many Darfurians at his [campus] supported the JEM agenda and were under suspicion by the authorities. I accept the applicant's account of his time living, studying and working in Khartoum as his account was both persuasive and credible.
16. The applicant claims that in Omdurman/Khartoum he was subject to constant discrimination and harassment by police because of his ethnicity. When he was working in the market, the police officers often came for bribes and insulted and abused him. Country information

² Department of Foreign Affairs and Trade (DFAT) "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 2.33

³ Ibid, 2.34

⁴ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, 2.4.3

⁵ Ibid, 2.4.4

collated by the UK Home Office from a number of sources observed that persons from Darfur and the Two Areas, and in particular those of African descent, experienced some level of discrimination or societal harassment in Khartoum. To illustrate this, five sources that provided them with information, referred to the use of derogatory phrases such as "slave", especially from those belonging to Riverine Arab tribes⁶. I accept the applicant's claim that he worked informally in a market where he was subject to verbal insults and abuse and asked to pay bribes by the authorities because of his ethnicity.

Participation in anti-government protests in Khartoum

17. The applicant claims that in December 2012 he participated in an anti-government demonstration in the central bus station area of Khartoum known as Jackson Square, over the mysterious death of four Darfuri students in early December 2012. He claims that there were many students and ordinary people who originally came from Darfur who demonstrated during that period of time in different places simultaneously. Because of his knowledge of Khartoum he was one of the team leaders calling his friends to join in the rally and showing them where to go. In Jackson Square, many students were arrested or injured as the police used tear gas, fired shots and beat people to disperse the protest. He was beaten by the police as they were chasing him and his friends. He stated that "the police were spraying us with teargas and using live ammunition and rubber bullets to disperse the crowds". He claims that after the demonstration the police started to look for those who organised and participated in those rallies. Some Darfuri people were interrogated and they confessed that he was one of the organisers of the protest although he was only a helper. He fears will be arrested by the police if he goes back to the Sudan because of 'organising' the rallies.
18. I note the delegate observed that readily available news articles on the internet reported that on 5 December 2012, four students at Gezira University in Wad Madani, were killed during a crackdown on anti-tuition fee protests. Demanding an investigation into the deaths, protests flared up with students from Khartoum engaging in running battles with the police. I accept that the applicant was living in Khartoum at the time of these protests and, even though he was no longer a student, it is plausible that he may have participated in the protests as a former Darfuri student. During the SHEV interview, the delegate asked the applicant a number of questions about his involvement. The applicant provided a credible account of being involved in one rally in Jackson Square in December 2012 and I accept that the applicant was there.
19. However, I do not accept the role the applicant claims he had in these protests. The applicant provided contradictory accounts of his role as an 'organiser' of the protests. On the one hand he claimed to have been an 'organiser' and then in further discussion with the delegate he claimed to have only been a 'helper'. He claimed that students informed on him to the authorities but later said that it was only 'possible' that they may have given up his name under torture. Based on the accounts he has given, I consider that the applicant has exaggerated his role of being an 'organiser' and embellished his claim by stating that his name had been given to the authorities. At interview the applicant gave a vague account of his role as an 'organiser' or 'helper' by describing students speaking with each other over the phone about what was going on, where people were gathering and what was the situation at various locations around the city. I consider that the applicant was no more than one of thousands of Darfuris involved at the time discussing the protests and where they were occurring.

⁶ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, 6.9.1

20. The applicant claimed that after the protest, the police had been specifically looking for him. He was asked at interview how the police knew who he was or where he lived, studied and worked and why was it that the police had failed to find him and question him. The applicant provided a flimsy story about how he was able to avoid being picked up by the police by constantly moving around and staying at friend's places. The applicant claims that he abandoned his work at the market and took a bus from Jackson Square to his hometown in Darfur to avoid detection by the police.
21. Overall, I accept the applicant's claim that he attended a protest in December 2012 after students were killed. I also accept that the authorities dispersed the protests in a violent manner and the applicant escaped. I accept that the applicant holds strong views about the Government and Darfuri student rights and discussed the protests with students and helped spread the word. I consider that the applicant embellished his claims at interview. He said that he had seen the bodies of the murdered students but he never claimed to have spent time in Wad Madani where the murders occurred and he provided only a vague account of this claim. I do not accept that the applicant could be considered to be an 'organiser' or 'helper' or that he had any other involvement in political activity in the Sudan. I am not satisfied that there is any evidence to support the applicant's claim that the authorities were aware of his involvement in the protest. He has stated that, after the protest he remained in Khartoum for at least a week and that he was subsequently able to travel freely around the country by bus, passing through various checkpoints. I also note that when the applicant departed Sudan through Khartoum International Airport (KIA) [in] May 2013, he used own genuine Sudanese passport and he was not questioned by authorities about any matter related to his political opinion or ethnicity, he did not appear to be on any stop or watch list and he was allowed to leave the country without hindrance. The applicant has not claimed that the authorities have made any enquires about his whereabouts since the protest in 2012. I do not accept that the applicant's involvement in the December 2012 protest is known to the authorities in the Sudan. The applicant has maintained that he is a relentless advocate of the rights of Darfuri people; however, he has not presented any evidence that he is politically active in Australia or that he has been politically active in any way either before or since his attendance at the protest in 2012 or that he intends to be politically active in the future.

Tribal conflict at [North Darfur]

22. The applicant claims that at the end of 2012, after spending a week in Geneina, he went to [Town 1] in North Darfur and worked [at a specified location]. The [workplace] belonged to [Tribe 2] first. However, when [Tribe 3] wanted to take over the [workplace Tribe 2] refused, the conflict started then and continued for a long time. [Tribe 3] kicked him and others out of the [workplace] as they wanted to use their own tribal people. In January 2013 he returned to Khartoum.
23. Country information reports there is inter-tribal violence in North Darfur. Ethnically-motivated inter-tribal discrimination and violence⁷ has been historically common in Sudan due to disputes over land, access to resources, migration and tribal rivalries. In-country contacts suggest that this has been exacerbated by the proliferation of weapons in Sudan. DFAT is unable to prescribe a particular risk but acknowledges that inter-tribal discrimination and violence continues, and is more acute in the conflict-affected areas. I accept that the applicant tried to relocate to North Darfur where he could earn a living but that he had to leave due to tribal violence as a result of a [dispute]. I do not consider that the applicant has any intention of

⁷ DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 3.3

moving back to North Darfur so I have not considered his claim about inter-tribal violence in North Darfur further.

Returning asylum seeker

24. The applicant claims that he had obtained a genuine Sudanese passport approximately 18 months to two years prior to departing the Sudan. He departed Sudan legally through KIA and he had a tourist visa for [Country 1]. He claims he was questioned at the airport about whether he was actually a tourist. He claims he convinced the immigration officer that he was and the officer stamped his passport and he left the country. I accept the applicant's account of his departure. The applicant used a machine readable passport and, as noted above, I do not consider that the applicant was on a watch list when he left the country or that he was wanted by the authorities as his passage out of the country was unhindered. I do accept that then he returns to the Sudan he may be considered a returning asylum seeker due to the manner of his return and the fact that he will be travelling on a temporary travel document as he no longer has his passport having forfeited it to the people smuggler.

Refugee assessment

25. 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

26. 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.

27. I have accepted that the applicant is a non-Arab Darfuri of [Tribe 1] and that he will be recognisable in the Sudan as a non-Arab. He was born in Geneina in West Darfur and his family continues to live there with the exception of his brother who is studying in Khartoum and a cousin in Omdurman. Prior to his departure from Sudan [in] May 2013, his residence in the Sudan for the majority of the preceding five years had been in Omdurman city in Khartoum State. The applicant completed his degree in Khartoum and remained there employed in [a

market]. He left Khartoum a week after the protests in December 2012, spending approximately a week in West Darfur with his family and approximately a month in North Darfur working in a [specified location]. He returned to live and work in Khartoum in the months prior to his departure for Australia. While I accept that the applicant has family and tribal links to Darfur, I consider, based on his previous movements and concerns about security and employment in Darfur, the applicant will reside in the area of Omdurman/Khartoum on his return to the Sudan as he previously lived, studied and worked there.

28. The applicant fears harm on the basis of both his ethnicity and subsequent anti-Government political opinion based on the Government's treatment of his people. He claims that no matter where he goes, the fact that he comes from Darfur and his skin colour will not change. He stated that although southerners attained self-government, the Darfuri Africans got nothing. The long-term marginalization caused the Darfuri to go against the government. He claims they realized that the genocide is focused mainly on black African communities and people in Darfur. The President is accused of organising war crimes and crimes against humanity by the ICC. The applicant claims that there is no safe place for a civilian like him whose country's leader is a murderer. The Janjaweed will not allow him to live safely in Darfur without giving them money. The tribes system also does not help him to live peacefully in the mountains in North Darfur.
29. Country information supports the applicant's claim of violence in Darfur. That violence has continued in Darfur since the applicant's departure from the Sudan. Attacks perpetrated by increasingly uncontrolled armed forces continued particularly in 2012-2014 in the Kutum and Hashaba areas of North Darfur. They intensified in other, previously relatively spared areas, after the 2013 creation of the Rapid Support Forces (RSF) the paramilitary arm of the National Intelligence and Security Service (NISS)⁸. The RSF and other government-aligned forces are widely reported to attack civilians in Darfur, including those in IDP camps, and commit serious crimes and human rights violations. DFAT reports that the current conflict is most acute in Jebel Marra located in central Darfur, with significant ongoing displacement as a result⁹. Human Rights Watch's 2018 World Report on Sudan found that in Darfur, Southern Kordofan and Blue Nile, Sudan's RSF and other government-aligned forces attacked civilians. Sudan failed to provide accountability for serious crimes committed during the conflicts, or other serious human rights violations¹⁰.
30. In Darfur, the NISS have detained student activists, human rights defenders, members of opposition parties and journalists. Authorities prosecuted activists and journalists for their reports and confiscated newspapers¹¹. DFAT assesses that individuals who are closely linked to civil society organisations that actively criticise the Government or work on issues such as human rights, the provision of humanitarian assistance or political activism are likely to attract negative attention from authorities. This is likely to be in the form of harassment and intimidation and may escalate to an individual being detained or experiencing violence¹². DFAT further assesses that this risk is faced by both individuals who are actively involved with armed opposition, as well as individuals who are simply located in areas controlled by the armed opposition¹³. A number of sources reported that these individuals have been detained due to

⁸ DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 2.35

⁹ Ibid, 2.36

¹⁰ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, 4.4.1, 4.6.12

¹¹ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, p.64; DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 5.9-5.10

¹² DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 3.47

¹³ Ibid, 5.9

their actual or imputed support of anti-government forces, such as various Darfur rebel movements. DFAT assesses that those who are perceived to directly threaten the authority of the Government may face risk of torture. This is likely to affect those who are outspoken. DFAT is also aware of some examples of civilians who are not outspoken being exposed to torture. DFAT is unable to prescribe a particular risk to an individual's potential to experience torture or comment on the general incidence of torture¹⁴. The available evidence¹⁵ does not establish that there has been significant or durable improvement in the situation in Darfur. The UK Home Office has made the assessment that non-Arab Darfuris continue to face serious human rights violations in Darfur at the hands of various actors which are likely to amount to persecution or serious harm.

31. The conflict in the region has caused large-scale and long-term displacement, DFAT assesses that the humanitarian situation remains bleak with over three million internally displaced people in Sudan and over 600,000 Sudanese refugees in neighbouring countries. Compounding the situation, Sudan has an estimated 375,000 refugees from Ethiopia, Eritrea, Chad, the Central African Republic and South Sudan¹⁶. Overall, DFAT considers that low levels of economic opportunity may act as a push factor for external migration, particularly for individuals from areas that are considered relatively stable, such as Khartoum¹⁷. The poor humanitarian situation and the promise of safety outside Sudan may also be a contributing factor, particularly for individuals from conflict affected areas. As noted, conflict continues in Darfur as well as South Kordofan and Blue Nile, The contested region of Abyei is relatively stable, due to the internal preoccupations of both Sudan and South Sudan and successful interventions by the UN Interim Security Force for Abyei. While other areas of Sudan have historically experienced instability, DFAT assesses that the current situation outside of conflict-affected areas, including Khartoum, is relatively stable¹⁸. Based on country information about the situation in Darfur, I am satisfied that there is a small but nevertheless real chance that if he returns to his family in Darfur he may come to the attention of the Janjaweed or be otherwise harmed in the conflict and that he may be subject to serious harm as a result, but I am not satisfied that this risk extends to all areas of the receiving country. Under s.5J(1)(c) of the Act the applicant will not have a well-founded fear of persecution unless the real chance of harm relates to all areas of the Sudan. I am satisfied that the area to which the applicant would return is Khartoum. However, even if I am wrong and the applicant intends to return to Darfur, I am satisfied that the applicant could safely relocate to Khartoum where he would not face a real chance of serious harm.

32. Darfuris have been migrating to Khartoum for several decades and continue to do so because of a variety of reasons including insecurity and environmental degradation in Darfur. There is now, as a result, a large – probably high 100,000s - established population of different groups of Darfuris dispersed across Greater Khartoum¹⁹. DFAT reports that there are examples of individuals from Darfur being targeted in Khartoum²⁰. There are a number of factors that influence the treatment of Darfuris in Khartoum, including their actual or perceived support for or association with rebel groups, or the criticism, particularly from students, of the implementation of the Doha Document for Peace in Darfur (which guaranteed free university

¹⁴ Ibid, 4.13

¹⁵ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, 2.4.9

¹⁶ DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 2.6

¹⁷ Ibid, 2.17

¹⁸ Ibid, 2.32

¹⁹ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, 2.4.17

²⁰ DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 3.8

education for Darfuris). For example, between late April and early July 2015 over 200 Darfuri students and their families were detained in Khartoum following protests. Some sources²¹ advised, with regard to the arrest of Darfuris in Khartoum, that there had been no large scale arbitrary arrest of Darfuris in Khartoum in recent years compared to that of 2008, following the JEM assault on Omdurman. Sources noted that at that time widespread security operations in Khartoum took place, which were often based on the skin colour and ethnicity of a person. 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. DFAT assesses that Darfuris who actively criticise the Government, such as through participating in protests, face a higher risk²².

33. The applicant claims to have been involved in political activity. I accept that on December 2012, he participated in an anti-government demonstration in the central bus station known as Jackson Square, Khartoum over the murder of four Darfuri students in early December 2012. There were many students and ordinary people who originally came from Darfur who demonstrated during that period of time in different places simultaneously. In Jackson Square, many students were arrested or injured during the rallies. I accept that the applicant talked with his friends about the protest and discussed with people where to gather. The applicant was able to escape the protest unharmed and was not detained or identified by police or security forces as having been a participant. He was able to travel to West Darfur, North Darfur and back to Khartoum, through various checkpoints, unharmed. He was able to work in Khartoum on his return there and he was able to depart the Sudan through KIA using his own passport without difficulty.
34. I am satisfied that the applicant was of no personal interest to the Sudanese authorities when he departed the country and that he has no profile as a result of his ethnicity combined with his previous involvement with the protest in Khartoum in December 2012. While I accept that Darfuris in Khartoum who actively criticise the Government, such as through participating in protests, face a higher risk of harm, I am not satisfied that the applicant's involvement in the December 2012 protest is known to the authorities in the Sudan and he has not presented any evidence that he is politically active in Australia or that he has been politically active in any way either before or since his attendance at the protest in 2012. As such I do not consider that he is likely to participate in active criticism of the Government in the future which would result in him being harmed as a result.
35. I accept that the applicant departed the Sudan in 2013 to seek asylum, and has since resided in Australia. He has submitted that if he returns to the Sudan he will be harmed by the Sudanese authorities because he has fled Sudan for Australia and made claims for asylum and that, combined with his ethnicity will result in the authorities imputing an adverse political opinion to him. He fears being identified by the NISS at the airport and that they will detain him, torture him and/or kill him as he is a person of interest to them. As noted, I do not accept that the applicant has any profile with the authorities in the Sudan beyond seeking asylum and spending a number of years in Australia.
36. The British Embassy in Khartoum reports that for any individual identified as a 'failed asylum seeker' it is standard procedure to have their documents removed and they may be subject to investigation for a period of up to 24 hours upon arrival at KIA. Should the investigation reveal any previous criminal activity or other nefarious reason for their original departure, the

²¹ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, p.39

²² DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 3.9

returnee is blacklisted from leaving Sudan again. If the crime is outstanding, they will be arrested. If a crime is not outstanding or the investigation does not reveal anything the returnee would be released by immigration. Things that would draw the attention of the authorities would include, but not be limited to: the use of an emergency travel document; having no valid exit visa in passport; or, being escorted into the country²³. I accept that the manner of the applicant's return may bring him to the notice of the authorities at KIA where he may be investigated for up to 24 hours to determine whether is wanted for any outstanding crimes. I am not satisfied that he is wanted for any crimes and the country information does not indicate that returnees are held in detention or subject to any other harm as a result of this investigation process.

37. DFAT is not aware of any evidence that suggests an asylum seeker returning to Sudan would be distinguishable to the broader community or susceptible to any form of discrimination or violence, unless they presented a threat to the Government. In reality, this is likely to affect vocal opponents of the Government. I do not accept that the applicant is a vocal opponent of the Government. DFAT understands that the main issue facing returnees is the perceived lack of financial support provided for effective reintegration into Sudanese society, particularly in Khartoum²⁴. Several sources noted that access to accommodation was not restricted, explaining that there was no systematic discrimination against persons from Darfur with regard to where such communities could live in Khartoum²⁵. However, many Darfuris are socio-economically marginalised and face obstacles because of their origins in accessing public services, employment and identity documentation. Regardless, there are Darfuris across all segments and sectors of society²⁶.
38. I note that the applicant has not claimed to have had any difficulty in the past in accessing accommodation and documentation in Khartoum. Crisis Group noted²⁷ that despite 'systematic' discrimination restricting those from Darfur and the Two Areas in conducting political activities, such communities were able to live 'day to day' in Khartoum. The source also considered that the level of discrimination an individual may experience was linked to how politically involved a person was and how long they had lived in the city; according to the source those with established links over a longer period would likely experience less discrimination in Khartoum. The applicant is a young man and does not claim to have any health concerns. In the Sudan he completed [number] years of education and has attained a degree in [specified discipline]. He has been employed in a range of different jobs in Sudan and in Australia. He has demonstrated his resourcefulness in that he managed to arrange travel to Australia negotiating with people smugglers in order to do so. I am satisfied that the applicant has some family in Khartoum and resided, studied and worked there previously and knows how to navigate life in Khartoum.
39. Having carefully considered the applicant's personal characteristics and circumstances, and the range of other evidence before me, I am not satisfied that the applicant faces a real chance of serious harm in Khartoum. Both DFAT and the UK Home Office indicates that Darfuris continue to face a risk of discrimination and harassment on the basis of their ethnicity, however, I find the level of discrimination and harassment that the applicant has described being subject to in the past, if it were to occur to the applicant in the future in accordance with current country

²³ UK Home Office, "Country Policy and Information Note: Sudan: Return of unsuccessful asylum seekers", 02 August 2018, OG9EF767932, 4.2

²⁴ DFAT, "DFAT Country Information Report - Sudan", 27 April 2016, CIS38A8012704, 5.35

²⁵ UK Home Office, "Country Policy and Information Note Sudan: Non-Arab Darfuri", 28 September 2018, OG9EF767949, 6.3.1

²⁶ Ibid, 2.4.18

²⁷ Ibid, 6.9.1

information and his personal circumstances, would not amount to serious harm resulting in a threat to his life or liberty, significant harassment or ill-treatment, or hardship and denial of access to services and livelihood such that he would not be able to subsist. I am therefore satisfied the applicant does not hold a well-founded fear of persecution in Khartoum based on his ethnicity, political opinion, past political activity or his return after seeking asylum in Australia or any combination or accumulation of those factors.

Refugee: conclusion

40. 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).

Complementary protection assessment

41. 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

42. 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.

43. As noted above, I have found that the applicant would return to Khartoum where he resided in the past and would not face a real chance of serious harm because of having participated in a protest in December 2012, or as a Darfuri person returning to the Sudan after seeking asylum in Australia and spending time in the West, or any combination or accumulation of those factors. Real chance and real risk involve the same standard²⁸. Based on the same information, and for the reasons set out above, I am also not satisfied that there is a real risk that the applicant would face significant harm if he returns to Khartoum.

44. Even if I am wrong and the applicant intends to return to Darfur, section 36(2B) of the Act provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm. As noted above, I consider that place to be Khartoum.

45. I have accepted that the applicant may be identified on arrival at the airport in Khartoum as having sought asylum in Australia and may be investigated for up to 24 hours at the airport as

²⁸ *MIAC v SZQRB* (2013) 210 FCR 505

to whether he is wanted for any crimes in the Sudan. I am not satisfied there is a real risk that the applicant will face significant harm during the investigation process at the airport. Furthermore, it does not amount to arbitrary deprivation of life or the death penalty and I am not satisfied that the country information demonstrates that there is any intention by the Sudanese authorities in such a process to subject the applicant to torture or cruel or inhuman treatment or punishment or degrading treatment or punishment. I am not satisfied this process amounts to significant harm as described in s.36(2A) of the Act.

46. I have also accepted that non-Arab Darfuris may be subject to discrimination and harassment in Khartoum including in certain employment opportunities, being called derogatory names and being required to pay bribes. I am not satisfied that this treatment, should it occur, amounts to significant harm. Nor am satisfied that this treatment, combined with the investigation he may face on re-entry amounts to an arbitrary deprivation of life or the death penalty and I am not satisfied that there is any intention by the Sudanese authorities to subject the applicant to torture or cruel or inhuman treatment or punishment or degrading treatment or punishment. I am not satisfied this amounts to significant harm as described in s.36(2A) of the Act
47. I reiterate that the applicant previously studied, worked and lived in Khartoum in the years prior to his travel to Australia and I do not consider that he would be precluded from doing so in the future. Further the applicant has no adverse security profile in Khartoum which would bring him to the attention of the authorities. I am satisfied that the existence of a significant Darfuri community in Khartoum, and the presence of the applicant's family, including a brother and cousin, and existing social contacts from his previous residence there, will enable him to reintegrate without significant difficulty.
48. Having regard to the applicant's personal circumstances and the general security situation in Khartoum, I am satisfied that it would be reasonable for the applicant to relocate to Khartoum where I have found that there is not a real risk that he will suffer significant harm.

Complementary protection: conclusion

49. 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

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

Applicable law

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.