



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

SUDAN

IAA reference: IAA17/03647

Date and time of decision: 22 December 2017 10:06:00

Rosie Mathlin, 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 from East Darfur in Sudan. He arrived in Australia by boat [in] May 2013. [In] November 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV application).
2. [In] September 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

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 17 and 23 October 2017 the applicant's newly appointed representative provided a submission and other documents to the IAA.
5. The submission, dated 16 October 2017, states that the information now provided to the IAA was not available to the delegate, but does not explain why. It states that the documents point to factual errors which undermine the delegate's findings. The submission states that the applicant has a "highly negative profile" with the national security organisation in Sudan, and that he and his family are well known in Darfur, where the situation is dangerous. The submission includes a number of factual assertions about the current security and political situation in Sudan and Darfur, but no sources are provided for the facts asserted, and some are stated to be rumours. To the extent that the submission contains legal argument, it is not new information and I have considered it. As to its commentary on the country situation, because it is unsourced and undated it is not possible to tell whether the information was before the delegate, but she did consider information that was given to her by the applicant and country information that was up to date at the time of her decision, which is similar to the information in the submission. In any case, however, the submission refers to the situation in Darfur and I consider that the applicant's home area and the area to which he would return is Khartoum, so the information is of little relevance to the applicant's claims.
6. The documents provided are
 - An **undated and unsworn "statement of claim"** made by the applicant. This restates some of the claims which were made before the delegate but also contains new information. It states that "three months ago" the Sudanese government arrested all the senior members of the local administration of [City 1], including the applicant's [relative] and his fiancée's [father]. The applicant's father was forced to flee with other family members to [a] camp to save his life. It states that the delegate made a mistake in stating (in the decision statement) that the applicant's tribe supports the government; in fact, one of the most famous anti-government leaders is [Mr A], who is a member of the applicant's tribe. [Mr A] is leading an armed struggle against the government and some of the applicant's [relatives] are involved in the armed struggle. According to his statement the applicant told the delegate that he was arrested immediately after his return to Sudan from [Country 1 in] 2016 (sic)¹ and he was imprisoned from [a time in] 2012 until [a time later in] 2012. He was charged with [a

¹ The applicant last travelled to [Country 1] and returned to Sudan in 2012

particular charge] and was not released until a lawyer was hired to defend him. The statement claims that the applicant's [relative] was recently arrested as a hostage to force the applicant to return. He reiterated that an opposition group is led by his relative [Mr A] and therefore all members of his tribe are in danger. He states that the Sudanese government is still killing the people of Darfur and is supported by Saudi Arabia.

- A **letter, with translation, dated [in] October 2017**, purportedly written by [a] solicitor, stating that he has been briefed to defend the applicant who was detained by the Sudanese National Security Organisation and charged [in] 2012 under section [a particular section of the] criminal Act, 1991. He was released on bail [in] 2012 after an assurance was given by his [relative].
 - A translation and original of an **undated and unsourced report** referring to the sentencing of "[a number of] employees of the local administration and [a number of] members of their families...as a result of a tribal bloodletting". The report names the men said by the applicant in his submission to be his relatives, as members of the Al Rezeyqat tribe.
7. The applicant's **statement of claims** contains some new information. I am satisfied that the document itself could not have been given to the delegate before the decision was made, and that s.473DD(b)(i) is satisfied. I am not satisfied, however that there are exceptional circumstances to justify considering the new information in the statement. It contains a number of new claims which have never been mentioned before; there is no explanation for the applicant's failure to mention these matters, and it is not apparent why he could not have done so, as many relate to events which it is claimed occurred before the delegate's decision was made.
- The applicant claims that he was arrested in 2012. Although, according to the statement, the applicant told the delegate about his claimed arrest in 2012, there is nothing in the referred material to indicate that he did so. The applicant has not provided any explanation as to why he would have omitted this key claim, if it were true. He was informed at the entry interview and at the SHEV interview of the necessity to provide all claims and information at the earliest possible opportunity and was told that an adverse inference may be drawn about his credibility if he did not. He did not mention ever having been arrested either at the entry interview, in the written claims made in his SHEV application or at the SHEV interview. At each stage he was specifically asked whether he had ever been arrested or faced charges. The applicant was represented in relation to the SHEV application. The delegate conducted a thorough interview and in my view gave the applicant every opportunity to provide all relevant information, and this information specifically, as she repeatedly asked him about claimed arrests and about his travel in and out of Sudan, which he indicated had occurred without problems. I am not satisfied that this information could not have been provided to the delegate, or that it is credible personal information, and there are no other factors which, in my view, would constitute exceptional circumstances to justify considering this new information.
 - As to the "recent" claimed arrest of the applicant's [relative] who put up an assurance so that the applicant could be released, it is not clear when this was and the applicant has not satisfied me that this information could not have been given to the delegate. I am also not satisfied that this further new information is credible personal information. Again, there do not appear to be any exceptional circumstances to justify considering this information.

- The claimed arrests of the applicant’s tribe and family “[a number of] months ago” appears to pre-date the delegate’s decision and it is not apparent why this information could not have been given to the delegate, who told the applicant at the SHEV interview in May 2017 that any further information provided prior to the decision being made would be considered. The applicant also did not tell the delegate that members of his family or his fiancée’s father were involved in the local administration, despite discussion at the SHEV interview about their political activity. Moreover, it is not evident how the circumstances of the applicant’s relatives in Darfur would be relevant to the situation of the applicant, whose home area is Khartoum, given the lack of detail about the reason for their arrests.
 - The applicant’s claim that his relative [Mr A] leads an armed group in which many of the applicant’s [relatives] are involved was also not raised before the delegate; no explanation has been provided for this omission, and the applicant was asked numerous questions, including at both the entry and SHEV interviews, about the involvement of his family members in such groups.
8. Overall, I am not satisfied that there are exceptional circumstances to justify consideration of the new claims contained in the statement, and so s.473DD(a) is not met.
9. The **lawyer’s letter, dated [in] October 2017**, post-dates the delegate’s decision. I am satisfied that the letter itself could not have been given to the delegate before the decision was made, and that s.473DD(b)(i) is satisfied. I am not satisfied that there are exceptional circumstances to justify considering the letter, as it relates to an event - the applicant’s claimed arrest and release on bail - which it is claimed took place in 2012. It is not apparent why information from the lawyer about this event was not and could not have been given to the delegate. As noted above, the applicant was represented in relation to the SHEV application, he was aware of the necessity to provide supporting evidence as he did so in relation to other matters, and he was questioned specifically and extensively about the matters to which the letter relates. I am not satisfied that there are exceptional circumstances to justify consideration of the letter, and so s.473DD(a) is not met.
10. The applicant has not satisfied me as to why the **undated and unsourced report** about arrests of his family members and members of his tribe, which he said occurred [a number of] months before October 2017 and which apparently therefore predated the delegate’s decision, could not have been provided to the delegate before the decision was made. Nor am I satisfied that this is credible personal information that could have affected consideration of the applicant’s claims, given that the source of the report is not identified, it is not dated, and it indicates that the arrests of members of the applicant’s tribe and another tribe were related to “tribal bloodletting”, whereas the applicant suggests that the arrests were political in nature and directed against members of his tribe by the central government. In these circumstances, and given its lack of probative value, I am also not satisfied that there are exceptional circumstances to justify consideration of the report.

Applicant’s claims for protection

11. The applicant’s claims can be summarised as follows:
- He is a member of the Riziegat tribe and was born in a village in East Darfur state.
 - His family fled from their village in 1991 when it was attacked by government forces and pro-government militia. They relocated to [City 1], where his father and some of his

siblings remain. The applicant was sent to Khartoum where he lived with his [relative] and attended school and university.

- The applicant has resided in Khartoum since 1991. He has returned to his native area twice (in 2008 and 2012) to visit his family. On each occasion he was attacked and robbed by armed criminals; in 2008 his [relative] was shot and killed in a robbery.
- The applicant attended [a number of] years of primary school. He then had [a number of] years of religious education before attending high school which he completed in [a particular year] at the age of [age]. He attended university, studying [a particular course over a period of time] and then completed [an additional course] at another university from [a particular year] until [a later year]. In the SHEV application form he indicated that he completed both courses, but at the SHEV interview he said that he said that he did not complete the first course, which was a four year course, because he faced problems at university.
- The applicant said that while he was at university the National Intelligence Security Service (NISS) tried to recruit him and other students from Darfur to work as informers. In 2002 he and a number of other students were abducted, detained for some days at an unknown location and tortured. The applicant said that they were released because they continued to refuse to act as informers and the authorities could not get anywhere with them. He said that after that he was chased and harassed; at one point he indicated that the last time he was approached in this way by the security forces was in 2007, but said that he had other problems which continued until he left. He said that sometimes he had problems at work which he attributes to the security forces – for example, he might be required to pay double tax, or someone would accuse him of selling stolen goods.
- From 2004 – 2007 the applicant worked as [occupation] in a shop selling [certain goods]. From 2007 until 2013 he operated his own business selling [certain goods].
- The applicant said that when living in Khartoum he was constantly subjected to humiliating treatment and insults because he came from western Sudan. He said that people from the west are identifiable because of their accent and their appearance which is darker than Sudanese from the north, because they are “mixed with” Africans. He said that he was called “[name]” or slave and regarded as an insect. He said that this treatment has severely affected him throughout his life. He said that friends would abandon him when he was known to be from the west. He said that he faced difficulties in study and work. He had to work to support himself while studying and sometimes he would not be paid wages. He said that once he applied for a job with [a particular company] but was rejected; he believes that this was because of his tribal origin.
- The applicant provided the delegate with his Sudanese passport on which he left Sudan and travelled to [Country 2] before boarding a boat for Australia. The passport expired in 2014. It shows that the applicant made [a number of] trips in and out of Sudan, to [a particular country] and [Country 1] in 2010 and 2012. He said that the purpose of the travel was to purchase [goods] for his [business], and on one occasion to complete a short course. At the SHEV interview he said that he had no difficulty travelling in or out of the country.
- If he returns to Sudan the applicant will be detained indefinitely or killed. This is how the Sudanese government treats asylum seekers. His personal information was released by the Department and this might alert the Sudanese government to the fact that he has sought asylum. His name is with the security officers from his previous detention in 2002 when he refused to collaborate.

- [A number of] months before the SHEV interview his fiancée was approached by security forces who asked questions concerning the applicant's whereabouts.
- There is no peace in Sudan and the government incites animosity between the tribes and government forces are still attacking civilian populations in west Sudan.

Refugee assessment

12. 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

13. 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.
14. The applicant has presented identity documents, including his Sudanese passport. There appears to be no issue as to his identity and nationality. There is no information before me to suggest that he has the right to enter and reside in any other country. Sudan is the receiving country for the purposes of the Act.
15. I have serious credibility concerns about all other aspects of the applicant's claims.
16. At the entry interview which was conducted [in] July 2013, about six weeks after the applicant arrived in Australia, he stated that nothing had happened to him in Sudan, he had left because of lack of economic opportunity, and he had left because he was the person who could help the family. He said that the city was secure but if you went outside the city there were problems. Asked what would happen to him if he returned, he said that all his dreams were in Australia and his family needs him to support them and it will be a shock for them if he returns. He answered "no" to questions about whether he had ever been arrested or detained and said that police, security and intelligence organisations had not impacted on his day to day life in Sudan. He answered "no" to questions about whether he or members of his family had been involved with any political group or organisation, nor had they been involved in activities or protests against the government.

17. Information that was before the delegate and given to the IAA indicates that the applicant was then “screened out” and subsequently provided a written statement dated [in] September 2013 which essentially makes the claims later put forward in his SHEV application.
18. When asked at the SHEV interview why he did not raise these claims at the entry interview, the applicant said that at the time of the entry interview he had arrived “from death”, he had been in the ocean and seen death, and when he came here the immigration department met him and treated him well, and it felt like he had arrived in paradise; having come from death to this situation he forgot everything and did not know what to say.
19. I do not accept this explanation. I note that the applicant arrived in Australia [in] May 2013 and the entry interview took place some six weeks later. I am satisfied that the applicant would have recovered from any trauma of the journey by then. It was made clear to the applicant what the purpose of the entry interview was – to establish whether there were any reasons why he should not be returned to Sudan – which, in my view, encompasses essentially the same information as is relevant for the purpose of a protection visa application. The entry interview includes a number of explicit questions about the person’s reasons for leaving their country and what they think will happen on return; and about their and their family members’ involvement in political or anti-government activity, and about previous interactions with security authorities. Many of these are virtually the same questions asked in the protection visa application form. I have listened to the entry interview and it appears to me that the applicant was composed, articulate and understood the process; there is nothing to suggest that he was under any misunderstanding either as to the nature of the interview or what he was being asked, or that he was somehow incapacitated from expressing himself. In any case, the applicant has not suggested that this was the reason why he did not mention the matters now put forward as his reasons for leaving Sudan and not wishing to return. I do not accept his contention that he was so happy and relieved to be in Australia and treated well that he forgot the reasons why he left Sudan, especially if those reasons were of the nature now claimed. As noted above, the questions asked at the interview explicitly sought to elicit this kind of information and I simply do not accept that if the claims he has now put forward were true and reflected the applicant’s actual experience, none of them would have been mentioned in that context. I consider that the applicant fabricated the claims that he has now put forward when he was informed that he had been “screened out” of the protection process.
20. I am prepared to accept that the applicant left his original place of residence in Darfur because of conflict. Country information indicates that the security situation is still very dangerous in Darfur and I accept that the applicant may be at risk of harm if he were to return there. However, he has lived for most of his life in Khartoum where he attended school and university, was employed and owned a business. He has relatives in Khartoum, and he said that his relatives from Darfur travel to Khartoum regularly. I am satisfied that Khartoum is the applicant’s home area and the place to which he would return.
21. I accept that there may have been problems on campus that affected the applicant to some degree although I do not accept the he was unable to complete his degree for that reason. Country information supports his claim that there was conflict between students who supported the government and others, and that NISS has a presence in universities. I do not accept that the applicant was abducted, detained for several days and tortured in 2002 because he refused to become an informer for the government. I simply do not accept that if an incident of this kind had really happened, the applicant would not have mentioned it at the entry interview. I do not accept that the applicant has an adverse profile with the government or the NISS because he refused to work with them or because he was once detained.

22. The applicant claims that he suffered discrimination in the form of name calling because of his place of origin and says that he has been severely affected by this. He says that the impact of being called those names remains with him today. He said that he was humiliated by teachers and students at school. Sometimes he was not paid wages when he worked. He said his application for a government job was rejected because of his tribe and origin in western Sudan. However, while he claims that he faced severe discrimination as a person from western Sudan, he is tertiary educated and has been consistently employed in positions related to his expertise, from 2004 until 2007 as an employee, and from 2007 until his departure in his own business. He made [a number of] business trips during 2010 and 2012, indicating, in my view, that the business was doing well. He completed a course of study related to his field on one of these trips. Country information indicates that corruption is prevalent in Sudan², and I accept that the applicant may have experienced the incidents he claims where extra tax was demanded, or he was accused of selling stolen goods; however I am not persuaded that this was because of his ethnicity and in any event I do not accept that this extortion was at a level which threatened the applicant's capacity to survive and earn a livelihood, or that it constituted any other form of serious harm. I accept that the applicant was unable to obtain employment with [a particular company] and that this may have been because of discrimination based on his origin, but I am not satisfied that this one incident, even if it was discrimination on the basis of his ethnicity, amounts to serious harm. I accept that he may have preferred to be an employee, and while I am sure that, as he says, he worked hard for what he achieved in making his own business, it does not appear that he has experienced difficulty earning a livelihood, supporting himself financially, or accessing services. Country information indicates that only 73% of the male population is literate³ and in this context, it is difficult to accept that a person who completed school and achieved tertiary education has suffered serious discrimination.
23. I do not accept the claim made at the SHEV interview that the applicant has relatives who are members of the Umma Party. He stated at the interview that the [relative] with whom he lived in Khartoum was a "senior person" though when asked his position, he replied that he was a member. He also said that the husband of his father's [relative] held senior government positions. Given that he explicitly stated at the entry interview that none of his family members had been associated or involved with any political group or organisation, I consider that this late claim is a fabrication.
24. The fact that the applicant travelled in and out of Sudan on [a number of] occasions, returning each time, leads me to conclude that he was not facing significant harassment, discrimination or harm in Sudan. I do not accept that the applicant was incapable of finding out about the possibilities for claiming asylum in the countries to which he travelled, had he really faced persecution or significant harm in Sudan.
25. I have doubts about the applicant's claims about the various incidents of armed robbery which he says occurred when he was travelling between Khartoum and Darfur, given his failure to mention these at the entry interview, although it may be that it was because these incidents did not form part of his motivation for leaving Sudan, and because they do not arise directly from the questions asked at the entry interview I also note the applicant's statement at the entry interview that the cities are secure and it is when one moves outside that there are problems. His claims are broadly consistent with country information which confirms that parts of regional Sudan are lawless and dangerous, although the situation outside conflict areas

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Sudan", 27 April 2016, CIS38A8012704 at 2.16

³ Ibid at 2.23

(which include Darfur) is “relatively stable”.⁴ The applicant’s evidence, however, is that Khartoum has been his principal place of residence since 1991. He stated at the SHEV interview that his father travels between Khartoum and Darfur, and that his [brothers] come and go from [City 1]. This evidence leads me to conclude that while there would be some risk of being harmed in criminal and generalised violence if the applicant were travelling regularly travelling between Khartoum and [City 1], there appears to be no compelling reason for the applicant to make the trip on a regular basis and I am satisfied that the level of risk could be managed and minimised to less than a real chance without an impermissible modification of behaviour.

26. I accept that, as stated by the applicant, Darfur has experienced armed conflict since the mid-1980’s, primarily in circumstances where the Sudanese government has waged war on local populations – principally the “African” Fur, Massalit and Zarghawa tribes - assisted by other local – usually “Arab” - tribes which it has armed and encouraged to form pro-government militia. According to DFAT, the conflict intensified again in mid-2013. As the applicant notes, the President of Sudan has been indicted in the International Criminal Court on charges including genocide against three tribes of Darfur, the Fur, the Massalit and the Zarghawa.⁵ DFAT assesses that the Fur, the Massalit and the Zarghawa are at high risk of discrimination and violence in Darfur on the basis of their ethnicity and actual or perceived support for armed rebel groups. DFAT assesses that individuals in Darfur may also be “indiscriminately targeted” by security forces.⁶ Country information indicates that individuals from Darfur may also be targeted outside Darfur, particularly in Khartoum, based on their actual or perceived support for rebel groups or criticism of the government, particularly by students.⁷ Overall, DFAT assesses that Darfuris in Khartoum face a moderate risk of discrimination or violence.⁸ However, the experience of the applicant does not reflect this level of risk. Based on his own credible evidence about his past experiences, I am satisfied that he is not perceived as a Darfuri of “African” tribal origin, or as a perceived opponent of the government either because of his tribe, his place of origin, his family association, or his own activities or expressed views.
27. Despite the applicant’s vehement claims to the contrary, the country information that was considered by the delegate clearly indicates that the Riziegat is an Arab, not an African tribe – in fact, one source refers to the Arab tribes of Sudan being “headed” by the Riziegat.⁹ The country information also states that the Riziegat tribe was one of the Arab tribes of Darfur initially recruited and armed by the government into the notorious “Janjaweed” militia.¹⁰ While sub-groups of the tribe subsequently turned away from the central government and sought to distance themselves from Khartoum, leading to some intra-tribal conflict,¹¹ there is no independent information before me to indicate that the Riziegat, as a group, are targeted by the government or government supported forces, within Darfur or outside it, on the basis of perceived anti-government political opinion. Country information indicates that in the applicant’s home region there is inter-tribal conflict between the Riziegat and the Ma’aliya tribes,¹² but none of the information before me indicates that the government has taken sides

⁴ Ibid at 2.32

⁵ Ibid at 2.5

⁶ Ibid at 5.13-5.14

⁷ Ibid at 3.8

⁸ Ibid at DFAT 3.9

⁹ Asylum Research Consultancy (ARC), "Darfur Country Report", 1 October 2015, CISEC96CF15571 at 6.1

¹⁰ Ibid; Human Security Baseline Assessment (HSBA) for Sudan and South Sudan, "Remote-control breakdown: Sudanese paramilitary forces and pro-government militias", 1 April 2017, CISED50AD5368

¹¹ ARC, "Darfur Country Report", 1 October 2015, CISEC96CF15571 at 2.2.4

¹² Ibid at 3.3 and 6.1

in this conflict – and indeed it is reported that the government is attempting to defuse the conflict¹³ - or that the applicant would be affected by it in Khartoum.

28. I do not accept the applicant's claim, made at the SHEV interview, that his fiancée had recently been questioned about him while doing her work in a desert area near [City 1]. For the reasons set out above, I do not accept that the applicant had a profile as an actual or perceived opponent of the government while he was in Sudan. In any event, according to his evidence, he has not been in Darfur since 2012 and left Sudan in mid-2013. In my view, there is no reasonable explanation for a sudden interest in him by government forces, four years after his departure from the country, in his area of origin where he had scarcely spent any time since [a young age]. I consider that this claim is a fabrication.
29. The applicant claims that because he has left the country he will be thrown in gaol for ever or killed if he returns; when he was in detention his personal information was "leaked" and maybe this information has reached Sudan. He said that a boat carrying Sudanese sank off [Country 2] and their passports were sent back to Sudan and their details were published in the newspapers. Now the government records the names of people going to [Country 2].
30. I have considered whether the applicant may face harm due to the circumstances in which he would be returning to Sudan. I note that the applicant was affected by the data breach, in which certain personal information was publicly available on the Department's website for a brief period in early 2014. I consider it unlikely that the Sudanese authorities accessed this information, but even if they had, I am satisfied that it would tell them no more than that the applicant had possibly applied for asylum in Australia. I consider that the authorities may suspect this in any case, because the applicant will be returning after a long, undocumented absence. As the passport on which he departed from Sudan has now expired it is possible that he may be returning on an emergency passport or in some unusual circumstances that would draw the attention of the authorities. I am willing to accept that the applicant may be identified as a failed asylum seeker on return.
31. A very recent UK Home Office report¹⁴ takes the view, based on information from a range of sources, that failed asylum seekers do not face a real chance of harm on return to Sudan for that reason alone, although the report notes that the number of returnees is limited and no ongoing monitoring is done by the authorities of countries from which they are returned. The British Embassy in Khartoum advised in February 2015 that it was standard procedure for failed asylum seekers to have their documents removed and be detained for investigation by immigration authorities for up to 24 hours on arrival. If the investigation revealed criminal activity or a "nefarious" reason for leaving Sudan, the person would be blacklisted from leaving again. Persons of interest might be referred to the security authorities, which have a presence at the airport; this might happen if a person had a record of contact with opposition groups outside Sudan or if they were of previous interest to the authorities; or if they did not have an exit permit.¹⁵ DFAT advises that the NISS reviews the documentation of all individuals entering the country.¹⁶
32. The UK Home Office Report quotes a UK NGO called Waging Peace which in 2012 and 2014 published reports of a small number of failed asylum seekers being detained and severely

¹³ *ibid*

¹⁴ UK Home Office, "Country Policy and Information Note – Sudan: Rejected asylum seekers", 1 August 2017, OG6E7028845

¹⁵ *Ibid*; DFAT, "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704

¹⁶ See also 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

mistreated on return to Sudan. Some testimonies indicated that the Sudanese authorities viewed the act of claiming asylum negatively, however while most of the people concerned came from conflict areas, and notably Darfur, most had, in addition, been politically active or had a political profile or had demonstrated publicly in the UK. The individuals in question thus appear to have had other characteristics, not shared by the applicant, which resulted in adverse attention and mistreatment, and this was the context in which adverse remarks about the fact that they had applied for asylum were made. There is no independent information before me to support the applicant's claim that the President has announced that asylum seekers will be killed, or that people who have travelled to [Country 2] are now automatically viewed with suspicion. I am satisfied that even if the applicant were identified as a failed asylum seeker, the weight of country information indicates that this would not result in a real chance of serious harm, given the absence of any other characteristics that might be viewed adversely by the government. Even though he is originally from Darfur, he has not lived there for many years. He is from an Arab tribe which has generally supported the government, and of which there is no evidence of persecution by the government. The applicant does not claim to have been politically active and I do not accept that his family members were involved with the National Umma Party, which in any event, is a national mainstream political party and the country information does not indicate that there is a real chance that a person with links to members of that party would come to the adverse attention of the security authorities on return.

33. In summary, I accept that the applicant may come to the attention of immigration or security authorities when he returns to Sudan, as he may be travelling on an emergency travel document. The country information indicates that there is a possibility that he would be detained and investigated for a period of possibly up to 24 hours on return. Based on the applicant's credible evidence about his circumstances and the country information, I am not satisfied that he would be regarded as a person of interest to the authorities because of his membership of the Riziegat tribe; as a person originally from Darfur, given that I am satisfied that neither the applicant nor his tribe has links to rebel or antigovernment groups there; as a suspected asylum seeker; or for any other reason arising from the credible information before me. I do not accept that the applicant was detained in 2002 so I do not accept that the authorities have a record of him because of that. The applicant had an exit permit on departure. Given his ability to make [a number of] trips outside Sudan in 2010 and 2012, I am satisfied that he has no outstanding military service obligations. Although he said that he had to pay bribes to get through the airport I am not satisfied, based on the credible evidence before me, that there is any reason why the applicant would have been prevented from travelling if he had not paid these bribes. I do not accept that he would have been able to make [a number of] trips in and out, as well as leave on his ultimate journey to Australia, had there been any significant adverse matter in his profile, including failure to complete military service in circumstances where he was still obliged to do so. The applicant is from an Arab tribe and has no history of political activity in Sudan or overseas. I am satisfied that he left on his own legally obtained passport. In these circumstances, the country information indicates, and I find, that there is not a real chance that he would be handed over to the intelligence authorities by the immigration authorities. I am satisfied that if the applicant were to be detained for up to 24 hours while his situation was investigated in the light of the circumstances in which he might be returning, this would not constitute serious harm, including a threat to liberty, having regard to the duration, purpose and likely circumstances of the detention, which the information suggests would be by immigration authorities at the airport for routine checking; nor am I satisfied that there is a real chance that he would be subjected to any other form of serious harm as part of this process.

Refugee: conclusion

34. 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

35. 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

36. 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.
37. As set out above I have found that the applicant does not face a real chance of harm at the hands of the government because of his place of origin in Darfur, or his membership of the Riziegat tribe, or because of any actual or imputed political opinion or association. For the same reasons and based on the same evidence I am also satisfied that he is not at real risk of harm for those reasons.
38. I have accepted that the applicant faced some discrimination because of his origins in western Sudan, but neither the applicant's own evidence about his actual circumstances, nor the country information about the level and nature of discrimination against people from western Sudan, supports a conclusion that the discrimination he has faced in the past reaches the threshold or meets the definition of significant harm, including cruel or inhuman treatment or punishment, which requires the intentional infliction of severe pain or suffering, physical or mental; or the infliction of mental or physical pain or suffering by an act or omission which, in all the circumstances, could reasonably be regarded as cruel or inhuman in nature. Nor in my view does it constitute degrading treatment or punishment, which requires an intention to cause extreme humiliation. While the applicant says that he was extremely upset at being called an insulting term applied to people from the west, given the evidence about his objective circumstances - he was able to access tertiary education, run his own small business and travel overseas on multiple occasions - I am not satisfied that being called names and possibly having been denied a job on one occasion constitutes cruel, inhuman or degrading treatment or punishment.
39. I have accepted that the applicant may be detained for a period of up to 24 hours at the airport on return because his documents or the other circumstances of his return may bring him to the attention of immigration officials. While country information suggests that prison conditions are harsh, the information does not suggest that the applicant would be detained in a prison. I am not satisfied that there is a real risk that detention for up to 24 hours by immigration

officials for routine checking would result in any form of significant harm as defined. I am satisfied that this is the case even if the applicant is identified as a failed asylum seeker, given that the country information indicates that failed asylum seekers do not face harm for that reason alone. There is no credible information before me to suggest that there is a real risk that the applicant's other personal characteristics, including his tribe and place of origin, might bring him to the adverse attention of the authorities or result in his being subject to significant harm of any kind.

Complementary protection: conclusion

40. 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

...

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.