



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SUDAN

IAA reference: IAA18/04710

Date and time of decision: 18 May 2018 13:44:00

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 Sudan. He arrived in Australia by boat, undocumented, on 17 February 2013. On 8 June 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV application).
2. The applicant claims, broadly, that he fears harm on return to Sudan because he will be forced to do military service. He also claims that if you are not a registered member or supporter of the ruling political party you are deprived of certain rights and benefits; for example, it is difficult to study or get a job. He claims that since leaving Sudan he has heard that the government has said that anyone leaving Sudan for Australia is a traitor, and the government executes traitors.
3. On 4 April 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa. The delegate found that the applicant had not been truthful in relation to some of his main claims. In some respects she found that his claims were not supported by country information. She was not satisfied that he faced harm on return to Sudan for any reason.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. Pursuant to s.473DC of the Act, I have obtained and considered new information, that being a report on compulsory military service requirements in Sudan prepared by War Resisters' International which is relevant to consideration of the applicant's claim to be a person who may be required to perform compulsory military service.¹ I am satisfied that there are exceptional circumstances to justify considering the report as it is more recent than the information considered by the delegate about the issue of military service, which is central to the applicant's claims. It also contains more complete information than the two reports considered by the delegate, in particular about the parallel streams in which Sudanese who are eligible to perform compulsory military service might be required to serve.

Applicant's claims for protection

6. The applicant's main claims are summarised as follows:
 - He was born in [year]. Initially he said that he was born in Darfur, but subsequently stated that he was born in Omdurman, Khartoum Province, and this is supported by his identity documents.
 - He claims that his parents are from Darfur. He has, at different times, claimed to be from the [Tribe 1] tribe, [Tribe 2], and also that he does not identify with any tribe.
 - His father died of [a] disease in 2003. His mother, [retired], and his sister remain in Omdurman.

¹ War Resisters' International, "War Resisters' International: Sudan", 21 April 2015, CISEC96CF15550

- The applicant completed [number] years of high school and says he has never worked in Sudan. He claims that because he is not a registered supporter of the government he will never be able to get a good job and he has no future.
- At the entry interview he said that he had not done military service, and feared being abducted and sent to the war zone to fight the rebels.
- In his SHEV application he said that he had completed forty five days compulsory military training in [year] when he finished school and that he had started, but abandoned, a second period of compulsory military service some months before he left Sudan.
- A friend of his father's assisted with his departure arrangements. The applicant said that he had a genuine passport which contained false information because boys under 18 are not allowed to leave the country due to military service obligations.
- If he returns he will be forced to do military service. He will be considered as a traitor because he ran away from military service. He will probably be tortured. He may be kidnapped and made to do more military service.
- Since leaving Sudan he has heard that the government announced that people who fled to Australia are traitors. Traitors are executed.

Discussion of claims and factual findings

7. The applicant has provided inconsistent information at different times about important matters. He was interviewed for the first time about four days after his arrival in Australia (hereafter referred to as the CAB interview); and for the second time (the entry interview) one week after the CAB interview. He provided a statutory declaration dated April 2015 setting out his claims in support of his SHEV application, and was interviewed about that application in June 2017 (the SHEV interview).
8. He has consistently stated that his date of birth is [date], so he was [under] eighteen years old when he arrived in Australia.
9. At the CAB interview the applicant said that he was born in Darfur and his ethnicity was [Tribe 1]. He claimed that he left Sudan because he was afraid that he would be kidnapped and used as a child soldier.
10. At the entry interview the applicant stated initially that he was born in Omdurman, in Khartoum State. Later in the interview he indicated that he was born in Darfur, but grew up in Omdurman. Asked to clarify, he said that he was born in Omdurman but his parents were from Darfur.
11. The applicant has presented an asylum seeker certificate issued by the UNHCR in [Country 1] [in] February 2013 which states that his place of birth is Darfur. The Sudanese birth certificate he gave the Department states that his place of birth is Omdurman.
12. At the SHEV interview it was put to him that the fact he had provided inconsistent information to the UNHCR and the Department about his date of birth might indicate that he was not telling the truth. He said that he had made a mistake and when he found out the correct information about his place of birth he corrected it.

13. In the written statement of claims he said that his family does not identify with any particular tribal group. At the SHEV interview he said that he is from [Tribe 2]. Asked why he had initially said he was [Tribe 1], he said that he was not really a tribal person, he was not “deep into” the “tribe thing”, and he assumed that he could pick anything that came into his head. He said he was told by his mother when he was little that he belonged to [Tribe 2], but he knows no words in the [Tribe 2] language and could not answer any questions about [Tribe 2] or their customs.
14. At the CAB and the entry interviews the applicant said that he left Sudan because he was afraid that he would be kidnapped – children are kidnapped and forced into the army. At the entry interview he was asked whether he had been involved with military service and after an untranslated discussion with the interpreter replied “No”. Later in the interview he was asked a number of questions about military service, and he said that he had not served with police, security or intelligence organisations, he had not received training in preparation for conflict and had not been involved in military service. Asked at what age Sudanese citizens do military service, he said that there is no particular age, but it is once you finish high school and have your university entrance exam.
15. In his written claims the applicant stated that he had “completed” two “tours” of military service. He said that the first one was of forty five days duration. In the SHEV application form he stated that the period was from 3 April [year] until 18 May [year], and he stated that he attended school until April [year]. At the SHEV interview he said that he did the forty five days military training at the end of his second year of secondary school, in about [year]. The training including weapons training. He said that all boys have to complete two periods of military service. He had some choice about when to start the second period, and did so “about a season” after the first. The second period is supposed to be for twelve months but after about one month the applicant thought that his unit was going to be moved to an operational zone. He formed this view because the whole country was unstable and he had seen on the news that the situation with the rebels had become more unstable. He did not want to go to war so he did not turn up the next day. He believes the government will be looking for him and he will be viewed as a traitor if they find him; he could be tortured. The applicant left Sudan two or three months after leaving the army; it took this long to obtain his passport and complete the departure procedures.
16. In his written statement of claims the applicant stated that he could not explain why the entry interview record indicated that he did not undertake military service, and he believes that he told the interviewer that he did.
17. Asked at the SHEV interview why he thought that his unit was going to be sent to an operational area, he said that his colleagues spoke about it; they heard officers talking about the group being sent to an operational area. Asked for more detail, he said that it was well known that trainees from that camp [were] trained as fighters before being sent to the war zone.
18. The applicant said that he contacted a family friend and told him that he wanted to run away. The friend got the applicant a genuine passport with a falsified date of birth (according to information given at the entry interview, where the applicant said that they don’t let you leave the country if you are seventeen).
19. At the entry interview the applicant said that he attended high school for [number] years but did not complete [another] year. He stated that he attended high school from the beginning of [year] until [year]. He said that he quit because he could not afford the fees. As noted above,

in the SHEV application form he stated that he left school in April [year] (and did not return), and indicated that he then did his forty five days military training; however in the statutory declaration he said that he completed primary school in [another year] and then completed [number] years of high school. At the SHEV interview the applicant indicated that he left school for financial reasons, because of circumstances to do with his father's death. He was questioned about why he could not find the money to finish his last year of school and, after a number of questions, finally indicated that he was also not willing to complete his schooling because he was never going to get a good job as that depends on being associated with the ruling party.

20. The applicant states that he left Sudan in November 2012, and the UNHCR certificate indicates that he entered [Country 1] in November 2012.
21. The applicant claims that his uncle has participated in some protests against the government, but the applicant was young at the time and cannot recall any further information. At the SHEV interview he said that his uncle had been arrested in 2008 or 2009, but other members of the family had faced no difficulties.
22. The delegate discussed with the applicant information indicating that in 2017 he had approached the IOM and requested assistance with returning to Sudan. He said that he first asked the IOM about returning to [Country 1] or another third country but the IOM told him they could only facilitate return to Sudan. He indicated that he was still pursuing that request, but he also wanted to proceed with the protection visa application. The delegate put to him that his expressed willingness to return to Sudan might suggest that he did not have a subjective fear of being harmed on return. He said that he is not sure whether he will be persecuted, or what will happen to him if he goes back. The applicant expressed some frustration with the process and said that he should have waited in [Country 1].

Credibility

23. The applicant's evidence is, overall, very unsatisfactory. As set out above, there are numerous instances where he has provided different information about key claims, and in my view, these inconsistencies have not been satisfactorily explained. I have considered whether the personal circumstances of the applicant could have adversely affected his capacity to put forward his claims and provide a consistent account of his circumstances, although he himself has not really suggested that this is the case. He was young when he arrived in Australia and was interviewed very soon after his arrival. He was not fully legally represented, but received some assistance from a volunteer service in preparing the written statement submitted with his SHEV application, which was completed some considerable time before his SHEV interview. The applicant was permitted to answer questions at the entry interview and the SHEV interview in English, despite it being apparent, in my view, that his English was far from fluent. It seems reasonable to think that, given all these circumstances, some mistakes might have been made; however, in my view, many of the problems in his account are so glaring, and concern such fundamental facts, that they cannot be accounted for as mistakes or misunderstandings resulting from any of the personal circumstances outlined above.

Place of birth

24. I do not accept that the applicant could have been mistaken about his place of birth. As pointed out by the delegate, his birthplace is stated as Omdurman on his birth certificate, a document which he must have had before he arrived in Australia, where he initially claimed he was born in Darfur; and [Country 1], where he told the UNHCR that he was born in Darfur. In

my view, the only possible reason for the applicant to have given two different places of birth, with the unsatisfactory explanation that he was mistaken about it, is that he was prepared to be untruthful in claiming that he was born in Darfur. I am satisfied, on the basis of his final version, which is confirmed by his birth certificate, that he was born in Omdurman.

Tribe

25. Similarly, I consider the fact that the applicant has provided three different versions of his tribe – stating on arrival in Australia that he is [Tribe 1], in his written claims that he does not identify with any tribe, and at the SHEV interview that he is [from Tribe 2] – can only be explained on the basis that he has not been truthful and probably thought that he could strengthen his claims by claiming to be from a Darfuri tribe, as country information indicates that members of [Tribe 2] and [Tribe 1] can face harm from the government, including in Khartoum.² It is possible that the applicant and his family do not identify with any particular tribe, and that this version of his claims is the truth; however, even so, I consider that the applicant would know whether he was, in fact, [Tribe 1 or 2]. I consider that the fact that he has claimed both at different times, again, reflects a willingness to be untruthful where he thinks it would assist him. Given the uncertainty about his tribe and the fact that he has not specifically claimed that he faces harm because of it, it is not necessary to make a finding about what his tribe actually is, but I am not satisfied that the applicant belongs to a tribe which is at risk of harm in Sudan, nor am I satisfied that the applicant is at risk of harm because of his tribe or ethnicity.

Military training

26. There are a number of significant discrepancies in the applicant's evidence about his fears regarding military service.
27. I am most concerned about the apparent discrepancy as to whether or not the applicant ever did military training, as this goes to his central claim. Notwithstanding issues about the timing of the entry interview about ten days after the applicant's arrival in Australia; or possible issues with interpretation or comprehension, of which there is no clear evidence anyway, I find it very difficult to accept that if the applicant had indeed completed forty five days, plus another month's military training as he now claims, this would not have been mentioned at the entry interview. It is very difficult to accept his explanation that he thought he had mentioned it. Given the number of questions asked about different aspects of the issue of military training, it seems to me highly unlikely that even if the applicant had misunderstood one of the several questions asked, he would not have understood some aspect of at least one of them, and that completely wrong information about this issue would have been provided. Moreover, given that the main reason he gave for leaving Sudan and fearing return was that he feared being forced to do military service, it is difficult to understand why the information that he had undertaken some military training, and, indeed, that he had run away, was not mentioned. In particular, had the applicant really deserted from his second round of compulsory service, as he now claims, it is difficult to see why he would not have mentioned this at the entry interview.
28. There are also problems with the timing of the events which the applicant claims precipitated his departure. The applicant has consistently claimed that he left Sudan in November 2012, and this appears consistent with the date of his arrival in [Country 1] as recorded on the

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Sudan", 27 April 2016, CIS38A8012704 at 3.4-3.9

UNHCR certificate. He claims that he remained in Sudan for two to three months after running away from military service, and says that this was about one month to six weeks after he started the second stage. This would place his period of service in about mid-[year]. However, in his SHEV application the applicant gave precise dates – from April to May [year] - for his first, forty five day period of service; and the information he provided there indicates that this was immediately after he left school. In the SHEV application he indicated that he undertook his second period of compulsory service about “one season” after the first round. It is not clear what he meant by the expression “one season”, but it could not be interpreted, in my view, as a period longer than one year, which would place the claimed second period of military service in mid – [year], not mid-[year]. This leaves a significant time gap which is unaccounted for, on this version of events.

29. At some points the applicant has indicated that he finished school in [year] rather than [year]. If that were the case, it is difficult to see why he would have mistakenly provided incorrect but very precise dates in the SHEV application form for the first military service period, also tied to his school attendance.
30. The applicant has given somewhat contradictory evidence about his reasons for leaving school. Initially he stated that he could not afford the fees, indicating that this was because of his father’s death. However, as noted by the delegate, he continued at school for a number of years after his father died, so this does not seem a very satisfactory explanation. He also claims to have completed [a] course, apparently at a private college, however it is not clear when this was – in the statutory declaration he said that it was after he finished school, which makes sense, however at the entry interview the date he gave for completing this course was [another year], the same year he says he commenced secondary school. The applicant’s ability to enrol in a private [college] does appear to contradict his claim that he was forced to leave school because he could not afford it. I note that when pressed by the delegate about the apparent implausibility of the claim that he left school for financial reasons, he said that there were other reasons for leaving school – adding that he thought there was no point in attending because he would not be able to get a decent job in any case.
31. The delegate noted that the applicant’s claim to have been required to do twelve months military service suggested that in fact he had completed high school, on the basis of country information stating that the periods of military service are 24 months for those who have not completed secondary school, 18 months for those who have, and 12 months for those who have completed tertiary education. The delegate concluded that the applicant had completed both school, and a period of twelve months compulsory military service. However, there is no suggestion that the applicant is a tertiary graduate, so the country information about the length of military service he was required to do is also not consistent with a finding that he had in fact only completed high school. Nor is it consistent with his age at the time he says he first did military training, which would have been about 15, when country information indicates that the minimum age for compulsory military service is 18.
32. Country information that I have obtained states that there are three streams of recruitment into the Sudanese Armed Forces – voluntary recruitment, formal conscription and enlistment in the paramilitary Popular Defence Forces (PDF). Those enlisted in the PDF must be not less than 16; although the minimum age was apparently raised in 2005, this report indicates that it is not clear how effectively this is enforced, and other information suggests that younger children are recruited.³ Service in the PDF involves a 45 day training period followed by 12 months of service for those who have completed secondary school and 18 months for those

³ War Resisters’ International "War Resisters' International: Sudan", 21 April 2015, CISEC96CF15550

who have not. In my view, this information suggests that the requirements for service in the PDF align more closely with the applicant's claims about the periods of service he was supposed to fulfil and the age at which he did so. If it were the case that he had served in the PDF it might also explain his apparent failure to mention at the entry interview that he had done military service, as the precise nature of service in the PDF, and whether it was of a kind referred to in the questions asked at the entry interview, might not have been clear to him, although I must say this seems somewhat unlikely. I note that one source in the country information considered by the delegate states that students are required to enter military service for a minimum of 45 days in order to be accepted into a university.⁴ This might be interpreted as suggesting that only 45 days service is required for students, in which case it is possible that the applicant had fulfilled his military service obligations on completion of the 45 days training.

33. Overall, the evidence about the applicant's military service obligations is highly unsatisfactory. Not only was his own evidence vague, contradictory and apparently inconsistent with country information, the country information itself is not very recent, lacks detail and is sometimes not clear. As noted above, the applicant has provided contradictory evidence as to whether he has undertaken any military service, stating on entry that he had not, and in his SHEV application that he had. The information he provided about the age at which he completed his 45 days training and subsequently commenced the further 12 months training is inconsistent with the country information indicating that the minimum age for recruits to the armed forces, if not the PDF, is 18; while there is information indicating that recruits can be forcibly taken at a younger age, the applicant does not claim that this is what happened to him – although it does form the basis for his claimed fear of harm in the future. The time periods for which he claims he was required to serve also do not fit squarely with the regulations about regular military service, but are more consistent with the rules about recruitment in the PDF, as is the age at which he claims to have been recruited. This leads me to think the applicant may have undertaken training and service in the PDF. It is not clear from the country information whether service in the PDF is an alternative to military service in the regular armed forces, so that, if it were the case that the applicant had completed service in the PDF, his military service obligations would have been fulfilled.
34. The applicant's evidence about the circumstances in which he deserted from his military service is also problematic. In his written statement he said that he was told he was required to serve as a guard in a factory, and his evidence that he just did not return to work one day is consistent with this. He indicated in the written statement that he formed his own conclusion that he might be sent to a war zone based on news reports and the general security situation in the country. At the SHEV interview he said that he formed this view because of officers' conversations that were overheard by his colleagues; and his evidence suggested that he was actually located in a military camp at the time. The evidence about this issue thus contains glaring inconsistencies, and if it were the case that the applicant was serving in a military camp, it seems highly unlikely that, as stated in the written claims, he could have just not turned up for work one day. The significant discrepancies in this evidence, which in my view are so major that they cannot be accounted for as mere mistakes, lead to a conclusion that the applicant did not desert from military service after a month or six weeks.
35. Given the problematic evidence, it is difficult to make firm findings as to the applicant's past experiences, his future fears, or what might happen to him on return. However, in this respect

⁴ Canadian IRB: Immigration and Refugee Board of Canada, "SDN102445.E Sudan: Military service including age of conscription, gender, length of service, recruitment practices and training, exemption conditions and alternative service options", 28 February 2007, 899

I have taken into account the fact that at the time of the SHEV interview, the applicant was pursuing a voluntary return to Sudan through the IOM. Though I accept that when he first approached the IOM, he inquired about going to a third country and not Sudan, when he was informed that this was not possible he seems to have accepted a return to Sudan. When the delegate discussed with him what this meant in terms of his claimed fear of future harm, he indicated that he did not really know what might happen if he went back. While I accept that the applicant is young, he appears to have become frustrated at the long delay in having his protection claims assessed, and that there may be enormous pressures on a person in his situation which might lead to them choosing to return to their country of origin despite concerns for their safety, I nonetheless consider that the applicant's willingness to return to Sudan is incompatible with the existence of a genuine fear that he will be subjected to serious harm on return.

36. Considered together with the evidence about the events prior to his departure, I am of the view that the applicant has probably completed his military service, most likely in the PDF, and does not have outstanding military service obligations. If it was the case that he had not done military service and his obligations were outstanding as at the time of his eighteenth birthday, it is difficult to see why he would have fabricated the claims put forward in his SHEV application suggesting that he had undertaken some military service. For the reasons outlined above, the evidence about the circumstances in which he claims to have abandoned his service uncompleted is so problematic that I consider it was fabricated. In these circumstances, accepting on his evidence that he commenced military service, the evidence points to a conclusion that he completed it.
37. Overall, I am satisfied that the applicant does not have outstanding military service obligations. However, country information indicates that there is some risk that even people who have completed their military service may be rounded up and recruited by force again. One source in the country information considered by the delegate states that there is no indication that systematic measures have ever been put in place to identify and trace those liable for compulsory national service, which has "characteristically" been enforced, at least in Khartoum, by round-ups in schools, public places and residential areas, and mainly by traffic checkpoints manned by military personnel. It is suggested that these measures are random, and have resulted in men who are both younger and older than the correct age, or those who are not eligible for, or who have completed military service, being detained and summarily taken to military training camps. At the same time, avoidance of military service is reportedly widespread and unimpeded, outside conflict zones.⁵

Uncle

38. The applicant has claimed reasonably consistently that his uncle was involved in activities against the government, although it appears that he may have added the claim at the SHEV interview that his uncle had been arrested because of it – he had never mentioned this before. His evidence about his uncle's claimed activities was very vague, and he specifically stated that this did not cause problems for the other family members; in these circumstances, while I am prepared to accept that the uncle may have been involved in protests against the government, I am not satisfied that this has any bearing on the risk of harm faced by the applicant on return.

⁵ Country of origin research and information (CORI), "Sudan: Information on military service and treatment of deserters / draft evaders in Sudan", 6 November 2014, CISEFCB23F7451

Non-supporter of ruling party

39. At the entry interview and in his written claims the applicant said that because he is not registered as a supporter of the ruling party he would not get a job, university education would be more expensive, and he would be more likely to be kidnapped and forced to do military service. At the SHEV interview the applicant agreed with the delegate that, even if it were the case that people who did not support the ruling party were denied benefits, there was no information to suggest that they were targeted for harm.
40. Country information indicates that the capacity of political opponents of the government to express contrary views is restricted. Official corruption is a problem. There is high unemployment and educational opportunities appear to be limited. Nonetheless, there is no independent information before me to support the applicant's claim that as a person who is not a registered supporter of the government, he would be subjected to discriminatory treatment in relation to employment, education or liability for military service, or harm of any kind. The applicant has not claimed, and there is no evidence before me to suggest that he has ever expressed political views in opposition to the government or that he would be regarded as a political opponent of the government.

Failed asylum seeker

41. There is no independent information before me to support the applicant's contention that the Sudanese government has announced that people who fled Sudan headed for Australia are traitors and will be executed, and this seems inherently unlikely. There is some country information which suggests that some Sudanese asylum seekers have been mistreated on return, although the most recent country information indicates that this is not the case.
42. A 2017 UK Home Office report takes the view that failed asylum seekers do not face a real chance of harm on return purely on the basis that they have sought asylum overseas, although the report notes that the number of returns is limited and no ongoing monitoring is done by the authorities of countries from which they are returned.⁶ The UK Home Office Report quotes a UK NGO called Waging Peace which in 2012 and 2014 published reports of failed asylum seekers being detained and mistreated on return to Sudan. Some testimonies indicated that the Sudanese authorities viewed the act of claiming asylum negatively, however all of the people concerned had been politically active, had a political profile or had demonstrated publicly in the UK; all were from conflict areas, particularly Darfur.⁷ In my view, the weight of country information obtained from a wide range of sources indicates that those returnees likely to come to the adverse attention of the authorities at the airport are those with a political profile and people returning from countries such as Israel (it is an offence for Sudanese nationals to travel to Israel) and Uganda (which is regarded as a hub of opposition parties).⁸ The applicant does not fit this profile; nor does he come from a conflict area. The applicant's identity documents show that he was not born in Darfur; and if he has lived there at all, I am satisfied that it was when he was a small child. While the applicant claimed that he was identifiable by his appearance as a member of [Tribe 2], I do not accept that he is a member of [Tribe 2], and there is no credible evidence before me to suggest that the applicant is from, or would be identified as being from a tribe which is viewed with suspicion by the authorities.

⁶ UK Home Office, "Country Policy and Information Note – Sudan: Rejected asylum seekers", 1 August 2017, OG6E7028845

⁷ Ibid at 6.2.2 – 6.2.7

⁸ Ibid; 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

43. 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 by immigration authorities to the security authorities; 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.⁹ The applicant’s evidence suggests that he did have the necessary documentation on departure. There is no information before me to suggest that the applicant has had any contact with opposition groups, either inside or outside Sudan. DFAT advises that the National Intelligence and Security Services (NISS) has a significant presence at the airport and reviews the documentation of all individuals leaving and entering the country; DFAT assesses that persons of interest and individuals returning without an exit visa would be questioned.¹⁰ I note that the applicant would not be returning without an exit visa per se, as he no longer has the passport on which he left, but his evidence suggests that his documentation was in order on departure. In my view, the weight of country information indicates that individuals returning on temporary travel documents or without a passport would be questioned as to their identity and activities outside Sudan, but would not be subject to particular suspicion, or to harm, in the absence of some additional characteristic.

Refugee assessment

44. 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

45. 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.

⁹ UK Home Office, “Country Policy and Information Note – Sudan: Rejected asylum seekers”, 1 August 2017, OG6E7028845, Annex C, Letter from British Embassy, Khartoum, 19 February 2015.

¹⁰ DFAT, “DFAT Country Information Report – Sudan”, 27 April 2016, CIS38A8012704

46. Despite the applicant having provided inconsistent information as to his place of birth, he has been consistent as to his name and date of birth, and has provided some identity documents to support his oral evidence about his identity. On this basis, the delegate accepted that the applicant's identity and nationality is as claimed. I am also satisfied as to his name and date of birth, and that he is a national of Sudan. There is no information before me to suggest that he has the right to enter and reside in any other country. I am satisfied that Sudan is the receiving country for the purposes of the Act.
47. As set out above, I am satisfied that the applicant was born in Omdurman in Khartoum Province, not in Darfur. Because of the applicant's inconsistent evidence I cannot be satisfied as to his tribal origin. Whatever his tribe or ethnicity, he has not presented credible claims that he has in the past, or would in the reasonably foreseeable future, face harm for this reason, and I am not satisfied that he would. While there is some information to suggest that Darfuris may be at risk of harm outside Darfur, I am not satisfied that the applicant would be identified as a Darfuri, as he was not born there and it appears that he may have never lived there; if he did, it was as a small child. The applicant has not presented credible claims that he faced, or faces harm as a Darfuri and I am not satisfied that he does.
48. I am not satisfied that the applicant faces harm as a result of his uncle's unspecified political activity, given the applicant's vague evidence about the nature of this activity, and given that he does not claim that it had any consequences for other family members. I am also not satisfied that the applicant has ever expressed political views adverse to the government, or that he would be perceived for any reason, including for having failed to register as a supporter of the ruling party, to be opposed to the government. I am not satisfied that he would face harm of any kind, including discrimination, for reason of his political opinion, or a political opinion imputed to him.
49. For the reasons set out above, I consider it most likely that the applicant has completed his compulsory military service. While there may be some risk that, despite having completed it, he would be caught in a random roundup and might then be at risk of being sent to do it again, based on the country information indicating that such roundups are essentially random, I consider that the risk of this occurring is remote, and insufficient to reach the threshold for a real chance.
50. I accept that the Sudanese authorities may suspect that the applicant is a failed asylum seeker as he would be returning to Sudan after a lengthy absence and without the passport on which he left. The most recent country information suggests that now, unlike in the past, merely being identified as a failed asylum seeker would not, without some additional element, result in the imputation of an anti-government political opinion, or result in serious harm. In my view, the weight of current country information indicates that individuals returning on temporary travel documents or without a passport would be questioned as to their identity and activities outside Sudan, but would not be subject to particular suspicion, or to harm, in the absence of some additional characteristic. The country information indicates that those returnees who have come to the adverse attention of the authorities at the airport are those with a political profile, actual or imputed, and people returning from certain countries which do not include Australia. I am satisfied that the applicant has no political profile, does not belong to any group which might be considered to hold anti-government political opinions, that he was not known to the authorities prior to his departure and he does not claim to have been involved in political activities outside Sudan or to have links, either within or outside the country with opposition groups.

51. I am satisfied that on return there is a possibility that he may be detained and investigated for a period of possibly up to 24 hours while his situation is investigated. However, based on the credible evidence about the applicant's circumstances and the country information, I am not satisfied that he would be regarded as a person of further adverse interest to the authorities, or as suspicious in any way for any other reason. I am not satisfied that a brief detention for questioning about his circumstances would constitute serious harm, including a threat to liberty, having regard to the duration and likely circumstances of the detention, which the information suggests would be by immigration authorities at the airport, not security authorities; 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. Overall, I am not satisfied that there is a real chance that the applicant faces serious harm because of the circumstances in which he would be returning to Sudan, including if he were identified as a failed asylum seeker.
52. The applicant has not raised any other basis on which he claims to fear harm on return to Sudan. Based on the credible information before me I am not satisfied that there is a real chance that he faces harm for the reasons claimed.

Refugee: conclusion

53. 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

54. 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

55. 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.
56. 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 tribal origin; or because he is or might be identified as a Darfuri; because of his actual or imputed political opinion, including because of his uncle's activity; or because he has not done military service. 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.
57. 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 who may require that his identity be investigated. I am not

satisfied that there is a real risk that detention at the airport for 24 hours by immigration officials for the purpose of a routine investigation into his identity would result in any form of significant harm as defined. 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.

Complementary protection: conclusion

58. 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.