



Darfur Judgment

11th April 2007

Last week, the Court of Appeal handed down judgment in AH, IG & NM (Sudan) v Secretary of State for the Home Department. AH, IG and NM are Sudanese nationals from Darfur. The judges allowed the appeals against the decision of the Asylum and Immigration Tribunal (AIT) that they could be safely removed to Sudan. The Home Office may consider an appeal to the House of Lords. If they do not, or that appeal is refused, AH, IG and NM must be granted refugee status in the UK.

Substance of the case

AH, IG & NM (Sudan) is an important case – particularly for Sudanese from Darfur. Before the Court of Appeal there was no question about the risk to these men in Darfur. It had already been accepted they were at risk of persecution in their home area. However, the AIT had decided that they could reasonably be expected to relocate to Khartoum, and that conditions in an IDP (internally displaced people) camp or a squatter area would not be unduly harsh.

This issue is often called the “internal relocation alternative” or “internal flight option”. If a person can find a place of safety somewhere else in their home country, even though they are at risk of persecution in their home area, that person ordinarily is not entitled to refugee status. However, they will not be expected to move to an area where conditions are so harsh that it is unreasonable to expect the person to live there.

The Court of Appeal ruling

The Court of Appeal decided that the AIT applied the wrong test when deciding that Khartoum was a reasonable place to expect AH, IG and NM to live. The Court applied the correct test itself, and decided that the conditions they would face in Khartoum were unduly harsh.

The Court had firstly been asked to find that these men would be at risk of persecution in Khartoum. The Court acknowledged there was evidence in support of that, but decided the AIT had not made any legal error in concluding the opposite. There was evidence to support the conclusion of the AIT.

However, when deciding that conditions in Khartoum would not be unduly harsh, the AIT had wrongly compared the conditions in the IDP camps and squatter areas to conditions generally in Sudan. Also, the AIT had wrongly failed to take account of the particular circumstances of the three men. The question was not whether conditions generally in Sudan were poor or miserable, but whether the difference in conditions in the home area of AH, IG and NM were such that it would be unreasonable to expect them to be able to continue a relatively normal life.

The Court of Appeal said evidence of the conditions in IDP camps or squatter areas in Khartoum “*make frightening reading*”. The Court concluded these conditions were unduly harsh – particularly, given that the three men were subsistence farmers from Darfur and therefore ill-equipped for city slum life.

Effect of the Court of Appeal ruling

The decision does not mean that all Sudanese (or even all Sudanese from Darfur) should be recognised as refugees. The starting must be whether the individual can establish a risk of persecution in their home area. It may be that many from Darfur will be able to do this. The current Home Office Operational Guidance Note on Sudan suggests the Home Office will accept

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that a non-Arab from Darfur is at risk in that region. If a person from Darfur shows he or she is at risk there, the Court of Appeal's decision will then provide strong support that a person from Darfur should not be expected to relocate to Khartoum. Nevertheless, the particular circumstances of the individual will always be relevant.

Generally, the Court of Appeal's decision will be helpful whichever country an asylum-seeker is from. If the person faces a risk of persecution in their home area, careful consideration must be given to their particular circumstances. Especially important will be the effect upon their ability to lead a relatively normal life of the difference in conditions between their home area and the area to which it may be said they could move.

A copy of the Court of Appeal judgment is available at
<http://www.bailii.org/ew/cases/EWCA/Civ/2007/297.html>

The AIT decision against which the appeal was brought is called HGMO (Sudan), and is available at
<http://www.bailii.org/uk/cases/UKIAT/2006/00062.html>