



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/09531/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 4 August 2014**

**Determination
Promulgated
On 22 September 2014**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR A G

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Mr T Hodson, Solicitor instructed by Elder Rahimi Solicitors

DETERMINATION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Cockrill in which he allowed the appeal of the respondent on asylum grounds.
2. The respondent was born in Ethiopia and accepts that he is technically a citizen of Ethiopia. He accepted that he was born in January 1988.

3. The judge noted that there was an issue as to the respondent's ethnicity.
4. The respondent's case is that he was born in, and lived in Ethiopia. Both his parents were born in Mandefara which is now part of Eritrea. He did not have any grandparents in Ethiopia. His father died when he was about 2 years old and was buried in Addis Ababa.
5. He travelled to Assab in Eritrea in 2005. He lived with his mother's parents. The grandparents mainly spoke Tigrinya to the appellant and he started to pick up some Tigrinya at that point. His mother spoke to him in Amharic and that was the main language used by the appellant.
6. His mother was a Pentecostal Christian. She had an Eritrean ID card. His grandparents were not Pentecostal but Orthodox and were not happy at the fact that his mother was a Pentecostal Christian. His mother could speak both Tigrinya and Amharic. As he had spent his early years in Ethiopia and his mother spoke to him in Amharic, that turned out to be his first language. His mother continued to speak to him in Amharic even though they had moved across to Eritrea where the appellant stayed for about five years. Assab, where they lived in Eritrea was an area in which Amharic was apparently widely spoken. A number of people had returned to Eritrea from Ethiopia in that particular region.
7. The appellant said in evidence that because of her religious faith as a Pentecostal Christian, his mother had been taken by the authorities in Ethiopia and had been imprisoned in 2009. He had been cared for by neighbours. In 2010 he left Eritrea to go to Sudan. He stayed with his paternal uncle in Khartoum for three years. In 2013 he flew to Paris, the airfare being paid for by his uncle. He was accompanied by an agent who provided him with a passport. The agent retained the passport. The appellant was then put on a lorry bound for the United Kingdom in March 2013. He was apprehended as he was entering this country in a clandestine manner and was here illegally. That was when he sought asylum.
8. His asylum application was refused on 12 July 2013. He was however accorded discretionary leave up until 19 July 2013 in light of his age. He submitted an application for further leave on 31 July 2013.
9. At the hearing the respondent spoke through an Amharic speaking interpreter. He relied on what was set out in his three statements. He was also questioned about the issue of tracing his family. There had been some letters from the Red Cross, notably on 25 February 2014 showing the steps that they had taken. There had not been any positive response unfortunately to their intervention in tracing family members of the respondent. The person that was being sought was a paternal uncle in Sudan and there was also in fact the aunt of the respondent who was a sister of that uncle.

10. The respondent confirmed much of what was in his witness statements. He said he was Tigrinian and not Afar.
11. In his findings the judge noted that the respondent's parents were born in Mandefara, which is now part of Eritrea but had been part of Ethiopia previously. The respondent speaks Amharic which is the dominant language in Ethiopia. He had expressed a fear of going back to Ethiopia because of his religious faith which was the same as his mother's, a Pentecostal Christian. He had accompanied his mother to church. He was also attending a Pentecostal church in the UK called the Calvary Victory Church in Canterbury. He attends church every Sunday.
12. The judge said at paragraph 71 that the critical question is whether or not the Ethiopian authorities will now accept the respondent as a citizen of Ethiopia and have him back in their country. The reason why they may not take him back is if they perceive that he is ethnically Eritrean.
13. The judge noted that the Secretary of State did not challenge the respondent's evidence that his parents were born in a border region which was previously Ethiopian but has now become Eritrean. The respondent's description of events seemed to have just two features. The first was that he went to church regularly with his mother and secondly that he assisted her on the market where she was selling fruit and vegetables. There was little other information provided.
14. He found that the respondent spoke Amharic and one could simply say that this is because he is basically an Ethiopian and that is why he would speak Amharic. Alternatively, one might say it is because his parents wanted to pass him off as an Ethiopian if one may term it as such, so that attention would not be drawn to him and his family. Inevitably therefore he would be raised using the local language of Amharic and certainly not Tigrinya which of course would cry out to all concerned that these were, so to speak, foreigners from Eritrea.
15. The judge found the respondent's account plausible of the raid on the house and the arrest of his mother by the Eritrean authorities because of her religion. He said this was a plausible account knowing the treatment of those who practised as Pentecostal Christians in Eritrea. There was nothing inherently implausible in the respondent's account that he stayed with neighbours for a period and then moved on to his uncle. There was nothing inherently implausible or likely or incredible about the respondent's account of his circumstances both in Ethiopia and then in Eritrea.
16. The judge acknowledged that unfortunately there were very few documents that really assisted in one way or the other. The respondent said he did not have any documentation in the form of say an ID document or a passport, and there was nothing that helped him in that sense. His

father is now dead and his mother has been arrested and detained. His uncle in Khartoum Sudan has not been traced. All of this puts therefore great weight on simply what the appellant had asserted.

17. The judge said what he found particularly revealing in trying to assess this case as a whole was the documentation provided by the Ethiopian Embassy. Basically they have rejected the respondent. The judge said he had tried to weigh up as carefully as he could whether simply that arises from the respondent's failure to produce enough documents, or really whether it was as a result of an interview with the respondent that the Ethiopian authorities appreciated that he had this Eritrean ethnicity. The connections with Eritrea are through both parents and that really meant, so far as the Ethiopian authorities were concerned, the respondent would not be welcomed back in Ethiopia.
18. The judge found that although this case was not at all clear-cut because of a lack of independent information and evidence, the view he formed, following **MA**, is that it is not reasonably likely that the Ethiopian authorities will accept him as one of their nationals. He considered that the truth was that they will see him not as Ethiopian and just Ethiopian but will see him as a young man who has got his Eritrean background and therefore he is simply not going to be accepted back in Ethiopia. It might be said that this conclusion flies against the fact that the respondent was speaking Amharic and that is his first language, but he thought that the respondent could get over that hurdle by his explanation that his mother spoke Amharic as well as Tigrinya but she was anxious that Amharic would be the language the respondent spoke and used wherever possible so that he would not draw attention to himself in Ethiopia. The judge said that although these cases are not straightforward because there is not very much material available, it did seem to him that this particular respondent has shown that he has got Eritrean ethnicity, although he is technically an Ethiopian national. As matters stand, the respondent would not be accepted back in Ethiopia by the Ethiopian authorities. Although that in itself is not persecutory, it would leave the respondent in practice in a complete limbo whereby he would not be able to go anywhere, and he could see that it could lead to persecutory treatment of the respondent because of the practical effect of withdrawal of Ethiopian citizenship from him.
19. For these reasons the judge allowed the respondent's appeal concluding that the respondent has successfully shown that there is a real risk of persecution for a Convention reason and this stemmed from the mixed Ethiopian and Eritrean elements in his case.
20. The appellant's grounds challenged the judge's conclusion that the respondent has established that he would be perceived as having Eritrean ethnicity largely on the basis that the Ethiopian Embassy have not been able to approve his application for a passport. The grounds argued that the judge failed to have due regard to **ST (ethnic Eritrean - nationality**

- return) **Ethiopia CG [2011] UKUT 00252 (IAC)** which requires a comprehensive assessment of the steps taken by the respondent in facilitating the acquisition of the requisite document. The grounds argued that the judge had materially erred by failing to address whether the respondent had provided all the relevant information at his disposal, and whether all reasonably practical steps had been used. The inability of the Ethiopian Embassy to issue a passport is not determinative that the respondent is ethnically Eritrean. There were a number of reasons that the competent authority could not verify nationality.

21. The second ground argued that the judge failed to provide adequate reasons for accepting the respondent's account. The judge's conclusion that the respondent's first language is Amharic was he would want to be "passed off as Ethiopian" since "Tigrinya would cry out that these were foreigners from Eritrea", failed to engage why the respondent would continue to speak Amharic when he relocated to Eritrea at 9 years of age, and where there would be no such need to pass him off as Ethiopian.
22. The appellant was refused permission to argue the second ground on the basis that it was simply an expression of the respondent's disagreement with a finding of fact that was reasonably open to the Tribunal on the evidence. Permission was granted to argue the first ground.
23. In granting permission the First-tier Tribunal Judge said it is arguable that the Tribunal misdirected itself at paragraph 57 by stating that "the critical question" was whether it was "reasonably likely that the authorities in Ethiopia would accept the appellant as one of its nationals". On this issue I agree with Mr Hodson that paragraph 57 was a record of the submission made by Mr Hodson and was not a finding that the judge made.
24. With regard to the first ground, Mr Hodson submitted that the respondent had approached the Ethiopian Embassy on two occasions. At Annexe H6 and H7 of the Secretary of State's bundle, was an application form completed by the respondent for an Ethiopian passport. At page 87 the Head of Consulate at the Ethiopian Embassy had written "the applicant has not attached supportive documents with his application for an Ethiopian passport. Therefore, there is no valid reason for the embassy to issue him with an Ethiopian passport". It is dated 31 July 2013 and signed by the Head of Consulate and is stamped by the embassy. I accept Mr Hodson's submission that neither the stamp nor what is written by the embassy has been disputed as not emanating from the Ethiopian Embassy.
25. The respondent made a second approach to the Ethiopian Embassy on 25 March 2014. On this occasion he submitted a statement giving his name, the names of his parents, where he was born and where they were born. I find that this statement and the background details he gave were consistent with the evidence the appellant provided in support of his asylum application. On this occasion the Head of Consulate wrote:

“Taking into consideration the information letter and further to the questions asked to the applicant in relation to his family background, we have come to the conclusion that the applicant has not provided sufficient documents to substantiate his nationality. Therefore the embassy is subjected to refuse this application.”

Again it was signed by the same Head of Consulate who signed the previous statement and it is dated 25 March 2014.

26. I find that the Ethiopian Embassy were plagued by the same problems the judge was faced with; which was that the respondent had provided very few documents to assist the Ethiopian Embassy. In the circumstances, I fail to see what further steps the respondent could have taken to facilitate the acquisition of the requisite documentation. His father has died and from his evidence his mother is detained. His uncle in Sudan cannot be traced. Bearing in mind that the appellant was a minor when his mother took him to Eritrea, was a minor when he went to Sudan and when he came to the UK, it is not clear to me what other documents he could have produced or attempted to obtain in order to establish his nationality.
27. Accordingly, I do not find that the appellant’s first ground is made out.
28. Mr Jarvis then sought to argue that the test in this case is whether deprivation of nationality amounts to persecution. He relied on paragraph 76 of **MA (Ethiopia) v SSHD [2009] EWCA Civ 289**. At paragraph 76 the Court of Appeal held as follows:

“This curious concession was, in my view, the basis of Longmore LJ’s judgment. I say curious because it is implicit in it that once a person claiming asylum has shown to the appropriate standard that she has in fact been deprived of her citizenship, it is for the Secretary of State to show that deprivation did not amount to persecution. But it is trite law that it is for the claimant to prove persecution or a well-founded fear of it, not for the Secretary of State to prove that there has not been persecution. Longmore LJ expressed his agreement with the concession, but the fact remains that it was not the subject of argument. It was followed by Longmore LJ when at [70] he formulated the question for decision before the court. That too was the way that Jacob LJ regarded the matter in his judgment in which he agreed with Longmore LJ’s judgment and added:

- ’75. Once a claimant for refugee status has established that their country of origin has taken away their nationality on grounds of race, they in my view have established a prima facie case for such status. It is true that the decision maker must ask: would they have a well-founded fear of persecution if they were returned today? But *in the absence of contrary evidence*, someone who has been deprived of nationality because of race would, if returned, be in a near-impossible

position – unable to vote, to leave the country or even unable to work. They may well be treated as pariahs precisely because they had their nationality taken away. They have ‘lost the right to have rights’. (Chief Justice Warren’s vivid words) and they have already been put in the position that their home state will not let them in – they cannot even go home.

76. In this case *there is no rebuttable evidence* showing that the appellant would not suffer from being stateless in the ways I have identified’.”

29. Mr Jarvis also relied on paragraph 64 of **MA** where it was stated:

“... whether a stateless person who is unable to return to the country of his former or his former habitual residence is, by reason of those facts alone, a refugee within the meaning of the 1951 Convention relating to the Status of Refugees... The Tribunal found, and the Secretary of State for the Home Department ("the Secretary of State") contends, that it is also necessary to establish a present well-founded fear of persecution for reasons of ‘race, religion, nationality, membership of a particular social group or political opinion’ ("the Convention grounds").”

The Court of Appeal upheld the Secretary of State’s contention and dismissed the appeal against the Tribunal’s decision. The decision of the Court of Appeal is binding authority for the proposition that a denial of return is not of itself persecution.”

30. Mr Jarvis submitted that the fact that the respondent speaks Amharic is evidence that he is an Ethiopian national. He spent five years in Eritrea with his mother who spoke Amharic to him. These are all relevant facts which ought to be considered in deciding whether deprivation of his Ethiopian nationality amounts to persecution.

31. He argued that the judge was wrong to find that because the respondent would be in Limbo because he does not have an Ethiopian passport would amount to persecution. Mr Jarvis submitted that this is the wrong approach and is unlawful in light of **MA** and **Revenko v Secretary of State for the Home Department [2001] QB 601**.

32. I accept Mr Hodson’s submission that Mr Jarvis had varied the grounds of appeal without applying to vary the grounds. At this point Mr Jarvis made an application to vary the grounds but as he had already argued the point, I allowed Mr Hodson to respond to the argument raised by Mr Jarvis.

33. Mr Hodson relied on **ST** which he said held that it is for the Tribunal to decide that the motivation behind the rejection to grant the respondent

Ethiopian nationality had persecutory intent. He relied on paragraph 93 of **ST** which states as follows:-

“MA (Ethiopia) establishes that a person seeking to rely upon the denial of a right of return from the United Kingdom to his or her home country must take ‘all reasonably practical steps to seek to obtain the requisite documents’ to facilitate the person’s return (paragraph 50 of the judgements). The test is not whether the applicant has shown that there is a real risk that he or she would be refused a right of return for reasons engaging the Refugee Convention. Instead, the applicant must show, on the balance of probabilities, that all reasonable steps have been taken. It is then for the Tribunal to make findings as to the reasons for the embassy of the country concerned to enable the applicant to return as a national (paragraph 57).”

34. I find that the judge dealt with this issue at paragraphs 81 and 82. His findings indicate that the motivation behind the rejection to grant the respondent Ethiopian nationality had persecutory intent which stems from the mixed Ethiopian and Eritrean elements in his case.
35. I find that the judge’s decision does not disclose an error of law.
36. The judge’s decision allowing the respondent’s appeal shall stand.

Signed

Date 12.09.2014

Upper Tribunal Judge Eshun