



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

Appeal Number: AA/08577/2014

**THE IMMIGRATION ACTS**

**Heard at Phoenix House, Bradford  
On 3<sup>rd</sup> March 2015**

**Determination Promulgated  
10<sup>th</sup> March 2015**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**KIBRUM MOGES TEFEMARIAM**

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz, senior home office presenting officer  
For the Respondent: Ms M Singh, counsel, instructed by Bravo & Co solicitors

**DETERMINATION AND REASONS**

1. The Secretary of State appeals a decision of the First-tier Tribunal which allowed an appeal by the respondent (hereafter the claimant), on asylum and human rights grounds, against a decision of the SSHD to remove him from the UK as an illegal entrant.
2. Permission to appeal had been sought and granted on the following grounds:
  - (a) The First-tier Tribunal judge made perverse or irrational findings on a matter or matters that were material to the outcome: there was

overwhelming evidence that the claimant was Ethiopian including his visa application, his genuine Ethiopian passport, fingerprints provided at the UK Embassy and production of a forged Eritrean ID card; the approach by the judge to the two reports was both irrational and perverse, ignoring the deficiencies in Dr Schroder's expertise and that he only examined a photocopy.

- (b) The First-tier Tribunal judge failed to take into account and resolve conflicts of fact or opinion on material matters: the acknowledgement by Mr Schroder that he is not a forensic expert; he had only received copies of the document and the judge's comment that it is "difficult to fathom how Mr Schroder can comment as to wear and tear of the lamination or whether the inks are the same if he has only seen photocopies"; failed to take account of the fact that the claimant was granted entry clearance as an Ethiopian national on a genuine Ethiopian passport.
  - (c) The First-tier Tribunal judge failed to give reasons or adequate reasons on material matters: failed to refer to any part of Dr Schroder's report that outlines why the document is genuine and why his unqualified opinion is preferred to that of a qualified forensic document examiner.
  - (d) The First-tier Tribunal judge made a material misdirection of law on a material matter: incorrectly applied the findings of MA (Ethiopia) CG [2009] EWCA Civ 289 and ST (Ethnic Eritrean-Nationality-return) Ethiopia CG [2011] UKUT.
3. The report by Mr Schroder set out in detail the reasons why he considered the Eritrean ID card presented by the claimant could be genuine. He gave reasonable explanations for the differences in ink, lamination and handwriting and offered an explanation for the scrubbing out of one name and insertion of another. The report by Mr Stiles did not address reasons for those issues but identified them as existing. The judge identified that he found it difficult to understand how Mr Schroder could identify such issues but Mr Schroder was commenting on the report by Mr Stiles in addition to the photocopies so that is not inexplicable. Mr Schroder identified matters that could lead to a conclusion the Eritrean ID card was genuine, and it was open for the judge to prefer the evidence given by Mr Schroder to that of Mr Stiles.
  4. There was no evidence of who had run in the Aviemore half marathon in 2013 or whether the organisers had invited Ethiopian team members to participate. The judge's comment that it was open to the SSHD to establish this ([38]) could be seen as requiring the respondent to disprove the claimant's claim rather than the claimant to prove his claim to the lower standard, even though phrased as possibly being of assistance to the Tribunal. It would have been relatively simple for the claimant to establish firstly whether there had been an invitation to participate in the half marathon and secondly whether a person of the name in the Ethiopian passport did or did not participate. However, although this turn of phrase used by the judge could indicate a reverse burden of proof, when considered alongside all of the evidence upon which the claimant and the respondent were relying it is of little consequence. The judge himself says that suitable enquiries "may or may not have assisted the Tribunal".

5. The First-tier Tribunal judge referred to MA (Eritrea) but concluded that on the basis that the facts were different, he did not consider that the claimant or his representatives could be expected to contact the Ethiopian Embassy to obtain proof that the passport was not genuine. The facts in MA (Eritrea) and ST (Ethiopia) were different and it was not the case that the claimant was claiming that he was an Ethiopian national or of mixed heritage but rather that the passport he had travelled on was not the genuine passport it purported to be. The claimant did not have the passport; his claim was that it was, in so far as he knew, a genuine passport but one to which he was not entitled because he was not Ethiopian. The judge has not incorrectly identified the ratio in MA and ST but, rather, has legitimately reached a conclusion that attending the Embassy would be of little assistance.
6. The judge refers in his conclusions to the witness evidence, the numerous documents produced as to schooling, the photos and to the claimant's knowledge of Eritrea ([39]) which he has set out in detail in the determination in [21(b)], [28], [29]. His findings as to the claimant's nationality are not merely based upon the two reports on the Eritrean ID card but upon the evidence as a whole. The report by Mr Schroder was preferred to that of Mr Stiles and that is a conclusion he was entitled to reach on the two reports before him. He gave adequate, albeit not fulsome, reasons for preferring Mr Schroder's report and concluded, to the lower standard that the ID card was genuine
7. Although many judges would have considered the evidence and reached a different conclusion, it cannot be said that the conclusion reached by the First-tier Tribunal judge was perverse or that the judge had failed to take relevant and material matters into account.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal stands.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005; I was not asked to make one and I see no need for one.

Date 9<sup>th</sup> March 2015

Upper Tribunal Judge Coker