



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA044082015

THE IMMIGRATION ACTS

Heard at : IAC Manchester
On : 23 May 2016

Decision & Reasons Promulgated
On: 25 May 2016

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NAHOM ALENU GEBREWOLDE

Respondent

Representation:

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer
For the Respondent: Mr M Schwenk, instructed by Broudie Jackson Canter

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Gebrewolde's appeal against the respondent's decision to remove him from the United Kingdom following the refusal of his asylum claim.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and Mr Gebrewolde as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant, born on 2 August 1996, claims to be a citizen of Eritrea but is considered by the respondent to be a citizen of Ethiopia. He entered the United Kingdom on 27 September 2014 concealed in a lorry and was encountered by the police. He was served with illegal entry papers and claimed asylum on 27 September 2014. His claim was refused on 27 February 2015 and he appealed against that decision. His appeal was heard in the First-tier Tribunal on 28 May 2015 and was allowed. The Secretary of State has been granted permission to appeal that decision.

The Appellant's Claim

4. The appellant claims to have been born in Assab, Eritrea and claims that his parents were Eritrean nationals who had always lived in Eritrea prior to his birth. He claims to be of Tigre ethnicity and to have been born into, and practised, the Pentecostal Christian faith. He did not hold any Eritrean documents. Shortly after his birth his family moved to Ethiopia as his father obtained a job in Addis Ababa and his mother, who had become ill, required medical treatment. His father paid two percent of his income to the Eritrean government. The family did not have legal immigration status in Ethiopia but his father was able to work, and his mother was able to access medical treatment, without problems until the start of the Eritrean/Ethiopian conflict in 1998. He attended a Pentecostal church in Ethiopia. In 2000 his father and sister were deported to Eritrea. He was not deported at the time because he was a small child and was with his mother at the hospital, but remained living in Ethiopia illegally with his mother. His mother died around September 2011 and he went to live with a friend of his father. He managed to make contact with his sister in Eritrea and found out that she was ill. She told him that their father was detained. He decided to visit his sister in Eritrea. He had no identity documents and was scared of being seen as an Eritrean spy if he sought to contact the embassy and so he travelled to Eritrea illegally. He stayed with his sister in Eritrea. He did not register for any identity or nationality documents as his sister told him that he would have no rights as a citizen in any event. He worshipped with his sister and others at the house, but on one occasion on 16 March 2014 the police came and he fled. He went to his uncle's house and did not know what happened to his sister. His uncle arranged for him to leave Eritrea and he travelled to Sudan and then travelled to France with an agent and on to the UK.

5. The respondent did not accept that the appellant was an Eritrean national, noting inconsistencies in his account of where he was born and considering it significant that he claimed to speak Amharic with only a limited understanding of Tigrinya. The respondent considered that the appellant had failed to explain why his family did not take the opportunity to obtain legal status in Ethiopia when Eritreans living in Ethiopia were able to acquire Ethiopian citizenship after 2003, or why he did not seek to acquire Eritrean citizenship when he was living in Eritrea. The respondent therefore concluded that the appellant was an Ethiopian national and considered that he would be at no risk on return to Ethiopia on the basis of his faith which was accepted as Pentecostal Christian. It was

accepted that he would be at risk as a Pentecostal Christian in Eritrea if he was an Eritrean national, but it was not accepted that he was Eritrean. His account of his house being raided by the police in Eritrea was not accepted and it was not accepted that he would be perceived as a draft evader on return to Eritrea. The respondent confirmed that removal directions would not be set to Eritrea, although both Eritrea and Ethiopia would be referred to in the removal decision. The respondent considered that the appellant's removal to Ethiopia would not put him at risk and that it would not breach his human rights.

6. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Bannerman on 28 May 2015. The judge heard from the appellant and also considered a letter from the Eritrean community in Lambeth charity. He accepted the appellant's account of having moved from Eritrea with his parents shortly after his birth and accepted that he was an Eritrean national. He noted that the respondent had accepted the appellant's claim to be a Pentecostal Christian and he accepted his account of the raid on his sister's house by the police and accepted that his father and sister were in detention. He accepted that the appellant would be at risk on return to Eritrea and allowed the appeal on asylum grounds.

The Secretary of State's appeal

7. The respondent sought permission to appeal Judge Bannerman's decision on the grounds that, in accepting the appellant's claim to be an Eritrean national, he had failed to take into account the country guidance in MA (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 289 and ST (Ethnic Eritrean - nationality - return) Ethiopia CG [2011] UKUT 252 and had made his findings without any evidence from the appellant that he was not entitled to Ethiopian nationality.

8. Permission was granted on 23 June 2015.

9. At the hearing before me Mr Harrison relied on the grounds of appeal, submitting that the judge had erred by failing to consider the requirement for the appellant to attend at the Ethiopian embassy to establish his nationality. Mr Schwenk submitted that MA and ST were not directly on point. Those cases were about statelessness and the denial of nationality, whereas the appellant had never claimed to be entitled to Ethiopian nationality or to have been unfairly denied such nationality. The respondent had never relied on those cases in refusing the appellant's claim. There was no legal requirement for the appellant to have evidence from the Ethiopian authorities denying him nationality. The judge was entitled to accept his account. In response to my enquiry as to whether the judge ought to have gone on to consider whether the appellant was at risk on return to Ethiopia, Mr Schwenk submitted that, having accepted that the appellant had lived in Ethiopia under the radar, illegally, after his father's deportation, the only conclusion he could have reached was that a return to Ethiopia would result in refoulement to Eritrea. It was inconceivable that the appellant could avail himself of Ethiopian nationality, when considering the Proclamation on Ethiopian Nationality in the bundle of documents.

10. I advised the parties that, in my view, there was no material error of law in the judge's decision. My reasons for so concluding are as follows.

Consideration and findings.

11. The respondent, in challenging the judge's decision, relies upon the cases of MA and ST. However I am in agreement with Mr Schwenk's submission that those cases are not applicable in the appellant's circumstances. Both cases involved appellants who were born in Ethiopia and who had a claim to Ethiopian nationality but who were asserting and relying upon deprivation of that nationality by the Ethiopian authorities on the basis of their Eritrean origins or ethnicity. That much is made clear in particular in the headnote of ST, which states at paragraphs 2 and 3 as follows:

(2) A person whose Ethiopian identity documents were taken or destroyed by the authorities during this time and who then left Ethiopia is as a general matter likely to have been arbitrarily deprived of Ethiopian nationality. Whether that deprivation amounted to persecution (whether on its own or combined with other factors) is a question of fact (paragraphs 76 to 78).

(3) The practices just described provide the background against which to consider today the claim to international protection of a person who asserts that he or she is an Ethiopian national who is being denied that nationality, and with it the right to return from the United Kingdom to Ethiopia for a Refugee Convention reason. Findings on the credibility and consequences of events in Ethiopia prior to a person's departure, will be important, as a finding of past persecution may have an important bearing on how one views the present attitude of the Ethiopian authorities. Conversely, a person whose account is not found to be credible may find it difficult to show that a refusal on the part of the authorities to accept his or her return is persecutory or based on any Refugee Convention reason (paragraphs 79 to 81)."

12. In the appellant's case he has never asserted that he was an Ethiopian national and has never claimed to be entitled to, or to have ever possessed Ethiopian nationality. His claim was that he was an Eritrean national who had lived in Ethiopia for most of his life, but not with any legal status. He claimed to have lived in the country illegally, "under the radar", as Mr Schwenk put it, since the deportation of his father and sister in 2000. Whilst the respondent did not believe that claim and considered that the appellant was an Ethiopian national, Judge Bannerman found the appellant's account to be credible and accepted his claim. The respondent's grounds do not seek to make any specific challenge to the positive credibility findings made by the judge and indeed, as Mr Schwenk submitted, the judge was perfectly entitled to accept the appellant's account. He gave reasons for so doing at [19] which, contrary to the assertion made in the grounds, did not depend solely upon the letter from the Eritrean community in Lambeth. Neither did the issues arising in MA and ST form any part of the respondent's refusal reasons.

13. Having made such findings of fact, the judge concluded that the appellant would be at risk on return to Eritrea as a Pentecostal Christian. That was indeed a matter conceded by the respondent at paragraph 27 of the refusal letter and the judge was accordingly perfectly entitled so to conclude.

14. However, where the judge erred in his decision-making was in his failure to go on to consider the risk of persecution in Ethiopia. At paragraph 44 of the refusal letter the respondent made it clear that both Eritrea and Ethiopia were being specified in the removal decision and that removal directions would not be set to Eritrea because of the accepted risk on return to that country. Removal was, therefore, intended to Ethiopia. That was a matter that the judge ought to have gone on to consider, given in particular that he had accepted the appellant's account of having resided in Ethiopia for most of his life.

15. Having said that, I find force in Mr Schwenk's submission that any such error cannot be considered to be material, given the appellant's accepted circumstances and considering the terms of the Proclamation on Ethiopian Nationality, Proclamation No.378/2003, which was before the judge, and according to which it is clear that the appellant would, on the basis of those accepted circumstances, have no possibility of acquiring Ethiopian nationality. I refer in particular to Part 2, section 5 of the Proclamation, relating to the acquisition of Ethiopian nationality, from which it is plain that the appellant, having never resided legally in Ethiopia and having been outside the country for some two years, would not be able to meet the relevant conditions. I accept Mr Schwenk's submission that a risk would arise that the appellant would be refouled to Eritrea and that in any event the respondent had not raised that matter as a viable alternative in the refusal letter. Mr Harrison did not challenge that submission.

16. Accordingly, I find that the respondent's grounds are not made out and that the judge's decision is one that was open to him on the evidence before him and does not contain any material errors of law.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow the appellant's appeal stands.

Signed
Upper Tribunal Judge Kebede
Date 25th May 2016