



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

Appeal Number: AA/08976/2014

THE IMMIGRATION ACTS

**Heard at North Shields
On 8 March 2016**

**Decision and Reasons
Promulgated
On 27 April 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[S O]

Respondent

Representation:

For the Appellant: Mr John Kingham, Senior Home Office Presenting Officer
For the Respondent: Ms Marian Cleghorn, Counsel, instructed by Halliday
Reeves Law

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal

Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant (hereafter the Secretary of State) appeals against the decision of a panel of the First-tier Tribunal allowing the respondent's appeal against a fresh decision taken on 13 October 2014 to refuse the respondent's asylum claim and to remove the respondent from the UK.

Introduction

3. The respondent is a citizen of Eritrea born in 1983. He claims that he was rounded up in June 1999 and received military training for six months. He served at the front in Kisd Eka but attempted to desert with a friend and was taken to a prison in Asmara to serve hard labour. One day when being transported from the detention centre to the place of work, the respondent and his friend tried to escape. The friend was shot and killed and the respondent was taken to a high security prison for a year. He eventually escaped again and fled to Sudan in about 2005. After arriving in the UK the respondent sent money to his wife to pay the fine for his desertion.
4. The Secretary of State accepted the respondent's identity and nationality but concluded that his account was not credible. The respondent's first appeal was heard in Newport on 31 July 2009 and was dismissed. Further submissions were made in 2010, 2011 and 2012. The Secretary of State eventually made a fresh decision in which the respondent was again found not to be credible and because he had left Eritrea before August/September 2008 he had failed to demonstrate that he had left illegally.

The Appeal

5. The respondent again appealed to the First-tier Tribunal and attended an oral hearing North Shields on 10 March 2015. He was represented by Ms McCrae of Counsel. The First-tier Tribunal considered various expert reports including a report from Dr Schroder. The panel found that the places named by the respondent were known to exist, escapes were possible from Eritrean prisons and the report from Dr Schroder was significant and important. That report explained the reason for the inconsistencies for which the previous judge had found insufficient basis to allow the respondent's appeal. The core of the respondent's account had remained unaltered and had been repeated on many occasions. The panel gave weight to the documentary evidence that the respondent had made a payment to his wife in Eritrea and the expert evidence that the wife would be required to make payment. The panel found that the respondent was a deserter from the Eritrean army who had left Eritrea illegally. His asylum claim therefore succeeded.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law because the medical evidence was of poor quality and the panel had failed to explain why the expert report from Dr Schroder supported the respondent's account to such an extent that they reached the opposite conclusion on credibility to the original judge.
7. Permission to appeal was granted by Upper Tribunal Judge Storey on 1 July 2015. It was arguable that the panel wrongly decided that it was consistent with Devaseelan guidelines to find that the respondent was now credible on the strength of an expert report, aspects of which on their own findings were dubious and it was not at all clear that they were entitled to conclude that the respondent's account could in hindsight be seen as consistent.
8. Thus, the appeal came before me

Discussion

9. Mr Kingham submitted that there was insufficient evidence in the expert report to justify departure from the findings of the previous judge. The evidence included an acceptance that part of the account was fabricated but that was denied in paragraph 14 of the decision. It was not clear where the expert report actually explained the inconsistencies. The general view was that Eritreans will alter their accounts where necessary to improve credibility. The medical point had already been rejected. Dr Schroder was not an expert on credibility. We do not know how questions put by Dr Schroder were assessed or even who assessed them. The expert report was insufficient to move away from the conclusions of the previous judge. Mr Kingham accepted that the core of the respondent's account had remained consistent but as soon as anything was analysed it fell to pieces. That strongly suggested fabrication.
10. Ms Cleghorn submitted that the panel assessed credibility. At paragraph 27 of the decision, Dr Schroder's expertise was not questioned. Paragraph 29 recognises that the expert report was not entirely clear on how Dr Schroder concluded that the respondent was not consciously seeking to deceive. At paragraph 31, the places named by the respondent are known to exist. At paragraph 45, the panel recognised that a higher level of evidence was required because of the starting point. However, the respondent did not need to be telling the truth about everything. The panel had other documents including the letter. The respondent has trauma focussed therapy three years post the previous decision. The trauma could have affected the evidence given and the respondent has attempted to hang himself. He is suffering from mental health problems. Photographs of the respondent in military uniform were submitted. The expert was able to identify the uniform as Eritrean. Payment vouchers were issued to people who were required to pay compensation. The panel made it clear that the starting point was the previous decision but on

balance was satisfied that the core elements of the account should be accepted.

11. Mr Kingham submitted in response that the panel found at paragraph 45 that the only real change in the evidence was the expert report. The panel considered the medical evidence but found it to be lacking. There was no finding that the military photographs depict the respondent. The respondent left before 2008 and it cannot be assumed that he left illegally. He says that he was in Sudan by 2005. If he was not credible then illegal exit could not be assumed.
12. I find that the panel did take care in considering the evidence in its entirety. At paragraph 15, the panel noted the payment voucher showing payment of 50,000 Nakfa because of the unlawful departure from Eritrea rendering the respondent's wife liable for the fine. At paragraph 48, the panel found force in the submission that one needs to ask why the voucher was produced and further found that there was consistency in the core of the claim because the wife would, on the basis of expert evidence, be required to make payment. I find that was an important change in the evidence because the payment voucher is not mentioned at all in the previous decision from 2009.
13. I accept that the panel did not give any great weight to the medical evidence and noted at paragraph 47 of the decision that the respondent had not attended for further medical treatment. The medical evidence was not particularly diagnostic other than post-traumatic stress disorder being raised with further investigations proposed. In relation to the military photographs, the panel found at paragraph 26 that they were not at all clear and it was not possible to say whether the person in the uniform was the respondent.
14. I find that it is clear from paragraphs 28-49 that the expert evidence from Dr Schroder was an important element in the decision along with the new evidence. The panel gave weight to the fact that the time when the respondent said that he was drafted into the army was consistent with the background material, the respondent was able to give some accurate information about his battalion, the places named by the respondent are known to exist, there were ample opportunities to escape from low technology Eritrean prisons and the practice of financial penalties for family members had an objective basis. I find that all of those elements were important pieces of evidence that were not available to the previous judge.
15. At paragraph 28, the panel noted that Dr Schroder reminded them that Eritreans tend in their narrative to jump forwards and backwards in time starting with what are considered to be the most relevant main events and then build the account around it. Inconsistencies regarding time had to be seen in the context of the manner in which events were related and also the different calendar used by some sections of society in Eritrea. The

confusion in the accounts given was attributed to memory problems due to the respondent's health condition.

16. The panel also found at paragraph 29 that it was not entirely clear how Dr Schroder concluded that the confusion in the respondent's account was not the result of a conscious attempt to deceive. At paragraph 31, it was not possible to clearly reconstruct from the statements given when and how often the respondent was arrested. At paragraph 45, the panel found that Dr Schroder had explained the reason for the inconsistencies which led the previous judge to reject the respondent's account. The panel found at paragraph 46 that the inconsistency in the respondent's accounts had been explained. Taking those findings as a whole, I am satisfied that the panel accepted that the inconsistencies in the respondent's accounts were not fatal to his claim because they were due to the factors mentioned at paragraph 15 above. The panel correctly emphasised that the core of the respondent's claim had remained consistent and had been repeated on many occasions.
17. Looking at the decision as a whole, I find that the panel had sufficient basis in terms of evidence that was not before the previous judge to depart from the previous findings. The limited concerns expressed by the panel regarding Dr Schroder's expert evidence do not amount to any kind of rejection of the report as a whole. The key elements of the expert report that support the respondent's claim are fully set out in the decision. There was an adequate basis for the panel to find that the respondent was a deserter from the Eritrean army who had left Eritrea illegally. That is sufficient to establish his claim.
18. Thus, the First-tier Tribunal's decision to allow the respondent's appeal did not involve the making of an error of law and its decision stands.

Decision

19. Consequently, I dismiss the appeal of the Secretary of State.

Signed 

Date 24 April 2016

Judge Archer
Deputy Judge of the Upper Tribunal