



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/09789/2015**

Appeal Number:

**AA/10987/2015
AA/10986/2015
AA/10988/2015
AA/10989/2015
AA/10990/2015
AA/10991/2015**

THE IMMIGRATION ACTS

Heard at North Shields

Determination

Promulgated

On 29 April 2016

On 10 May 2016

Prepared on 2 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**N. Z. & 6 Others
(ANONYMITY DIRECTION MADE)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Soltani, Solicitor, Iris Law Firm

For the Respondent: Mr Johnson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are a husband and wife and their five children, who, as citizens of Eritrea, claimed asylum on 30 December 2014 following legitimate entry to the UK. The Appellants travelled to the UK upon valid Eritrean

passports endorsed with valid grants of entry clearance as visitors. They had applied for their visas in Saudi Arabia, and in their applications they had declared that they had lived in Saudi Arabia for many years, and that they held residence permits allowing them to do so. The First Appellant declared an employment in Saudi Arabia by a subsidiary of Unilever since February 1994. They declared an intention to visit the UK for a short period for the purpose of tourism.

2. Having entered the UK the First Appellant claimed to have lost his employment in Saudi Arabia, and thus claimed that the family had lost their residence permits. He claimed to have destroyed the family's Eritrean passports after entry and prior to claiming asylum. The Appellants denied having ever been issued with passports by Saudi Arabia.
3. The First Appellant claims to have been granted refugee status from Ethiopia by Sudan in 1981, and to have travelled from Sudan to Saudi Arabia in 1989. Once Eritrea gained independence from Ethiopia in the 1990s he says that he was required by Saudi Arabia to hold his own Eritrean passport – which he duly acquired in recognition of his Eritrean nationality, paying the diaspora tax due as an expatriate, as required.
4. The Respondent accepted that the Appellants were citizens of Eritrea, but nonetheless their applications for asylum were refused on 26 June 2015, when decisions to refuse to vary their leave were made, together with decisions to remove them from the UK.
5. The Appellants duly appealed against those immigration decisions and their appeals were linked for hearing as raising common issues of fact, and in due course they were heard together by First Tier Tribunal Judge Fisher. The appeals were each dismissed in a decision promulgated on 4 January 2016.
6. Pausing there, it is accepted by Ms Soltani that the Judge had a proper evidential basis for (and gave adequate reasons for) his decision that he was not satisfied that either of the adults who had given evidence to him were reliable witnesses. As the Judge identified they had clearly both lied to him in the course of their oral evidence about their history of travel outside Saudi Arabia [29].
7. The Appellants lodged applications with the First Tier Tribunal for permission to appeal. The applications were refused by First Tier Tribunal Judge Parkes on 27 January

2016. He was satisfied that the grounds amounted to no more than a disagreement with the conclusions reached, because even if the Judge had erred in his analysis of their position should they return to Eritrea, he was entitled to find that the Appellants had not shown that they were unable to return to Saudi Arabia and live there in safety.

8. The Appellants renewed their applications for permission to appeal to the Upper Tribunal apparently relying upon the original grounds to those advanced to the First Tier Tribunal, and in addition asserting that the First Appellant was of an age at which he remained liable to conscription, and thus upon return to Eritrea would be perceived as a draft evader and ill-treated. Their applications were granted by Upper Tribunal Judge Smith on 4 March 2016 on the limited basis the Judge had arguably erred in relation to his assessment of the risk of conscription in Eritrea in the light of the age of the First Appellant, and had arguably failed to provide adequate reasons for his finding that the First Appellant would not face such conscription. Before me Ms Soltani accepted that this was the extent of the limited grant of permission.
9. The Respondent filed a brief Rule 24 response on 20 April 2016 to say that the Judge had directed himself appropriately and made no error.
10. Belatedly the Appellants made an application on 21 April 2016 pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules requesting the Tribunal to “revisit” the Judge’s conclusion that the Appellants could return to Saudi Arabia to live. No formal draft amendment to the grounds was provided then, or subsequently – although I treated the letter of 21 April 2016 as such for the purpose of Ms Soltani’s argument.
11. Thus the matter came before me.

The original grounds of appeal

12. The original grounds were not well drafted. Although they purport to have been drafted by the First Appellant as a litigant in person, they would appear to me to have been drafted with legal assistance. Whoever was their author, in my judgement they display all of the traps identified by the Upper Tribunal in VV (grounds of appeal) Lithuania [2016] UKUT 53, and Nixon (permission to appeal; grounds) [2014] UKUT 368. Thus,

at best, the original grounds amount to no more than a series of disagreements with the decision, and fail to identify any arguable error of law. To be fair to her, Ms Soltani did not seek to rely upon them.

The renewed grounds

13. The renewed grounds, which do not bear the author's name but again give the appearance of having been drafted on the Appellant's behalf rather than by him, assert that the judge "completely misunderstood the claim of the Appellants". That is a rather bold assertion, and in my judgement it is one for which the author had no proper foundation.
14. The renewed grounds go on to point out that the First Appellant was aged 51 at the date of the hearing, and assert that since he was below the age of 54, he was still of an age at which he remained liable to conscription. He was said to have left Eritrea illegally (although when this had occurred was not identified). Thus it was argued that even if his evidence was not credible in some respects, the Judge had failed to apply the applicable country guidance to be found in MO [2011] UKUT 190. If the Judge had done so, it was argued that he ought to have gone on to conclude that upon return to Eritrea the First Appellant would be perceived as a draft evader and ill-treated by the authorities.
15. As such the renewed grounds are in my judgement disingenuous; they fail to properly engage with either the evidence that was placed before the Judge, or the full extent of the guidance that is to be found in MO.
16. Ms Soltani accepted before me that the Second Appellant as a married woman was exempt from national service, and that the children were all far too young to be at risk of being perceived as draft evaders. She also confirmed that no argument had been advanced to the Judge, or was now advanced, to claim that the mere requirement of performance of national service in Eritrea gave rise to a risk of harm. The First Appellant had not claimed to object to the performance of national service on religious or moral grounds, or to any of the specific duties that he would be required to perform.
17. Ms Soltani confirmed that in relation to the renewed grounds, and the existing limited grant of permission, the Appellants' case was that upon return to Eritrea the

First Appellant would be identified as one whose age meant that he was liable to perform national service, and that enquiries into his circumstances upon his returning to Eritrea for permanent settlement would be different to any enquiries that had been made of him upon his family visiting in 2011. She argued that those more fulsome enquiries would disclose that he had left Eritrea illegally in the past, that he had been involved in the ELF, and that he had claimed refugee status in Sudan. The combination of one or more of these factors with the perception of him as a draft evader, meant that he was at real risk of being detained and ill treated whilst further enquiries were made of him, and whilst he was being detained and punished for draft evasion. She pointed out that the Respondent had conceded before the Judge both the First Appellant's claim to past ELF activity, and the claim to refugee status in Sudan, although she accepted that the Respondent had not conceded that he had ever illegally exited from Eritrea.

18. As Ms Soltani frankly acknowledged, the difficulty with the case being advanced in this way is that it ignores the willingness of the Appellants to apply to the Eritrean authorities for the issue of Eritrean passports in 1994 [28], and more recently in both 2008 and 2013 [VAF], and moreover, the willingness of the Eritrean authorities to issue passports to them. The only sensible inference to be drawn is that the First Appellant has always been prepared to pay, and has paid, the diaspora tax due from time to time upon his earnings outside Eritrea, as indeed he admitted to Judge Fisher he had done in his oral evidence.
19. Moreover, in 1981, the First Appellant would have claimed refugee status in Sudan from Ethiopia, not Eritrea, because that country did not yet exist. If he had left a country illegally to enter Sudan, then it was Ethiopia that he had left, and not Eritrea. On his case, the only time he had left Eritrea was in 2011.
20. Finally the presentation of the case in this way would also ignore the willingness of the Appellants to travel as a family to Eritrea in 2011 using their Eritrean passports to do so, the failure of the Eritrean authorities to act in any way adversely to the First Appellant whilst he was in the country, and the lawful departure of the family from Eritrea using those passports at the end of their visit, whenever the true date of their departure actually was.

21. It is self evident, and the Judge was perfectly entitled to draw this conclusion, and gave perfectly adequate reasons for doing so, that the First Appellant can have foreseen no risk of harm to himself, or to his family in 2011, from the Eritrean authorities. He would not otherwise have taken them from Saudi Arabia to Eritrea [28].
22. The Judge also noted that the Appellants had failed to disclose their visit to Eritrea in the course of their visa applications to the UK. He rejected the assertion that this was a simple mistake, or, somehow the fault of the agent employed to obtain the visas. Again he was perfectly entitled to do so for the reasons that he gave.
23. Ms Soltani accepted that if the Appellants had in 2011 travelled upon their own lawfully issued Eritrean passports (and they do not admit to holding any other passports) then it followed from the expert evidence presented to the Upper Tribunal in 2011 in the course of MO by Professor Kibreab that they must also have held lawfully issued exit visas, which would have been endorsed upon those passports. According to Professor Kibreab's evidence in MO the First Appellant would not in 2011 have been able to get such an exit visa as a male then aged 47 unless he was either, i) a person declared unfit on medical grounds to perform any military or national service by an official committee, ii) a highly trusted government official and family, or, iii) a member of ministerial staff recommended by the department to attend studies abroad.
24. In the light of Professor Kibreab's evidence the Upper Tribunal considered that the categories of individuals who were reasonably likely to be regarded with serious hostility upon return were those previously identified in the guidance given in MA, with the exception of those persons whom the regime's military and political leadership perceived as having given them valuable service either within Eritrea itself or abroad, and possibly, individuals (and their children born afterwards) who had fled what later became the territory of Eritrea during the war of independence [MO #133 (iv)].
25. The First Appellant does not appear to have engaged with this guidance before Judge Fisher, and thus he has never properly explained the basis upon which an exit visa was granted to him, or even accepted that he held one (although it occurs to me that recognition of the difficulties that the existence of an exit visa might cause

his asylum application may be why he has failed to produce the family's passports, and why he has claimed to have destroyed them). Since he has never claimed to be in any way medically unfit to serve, or to have submitted himself to an official committee for assessment of his fitness for service, or, to have been engaged in long term study on behalf of an Eritrean Ministry, the only alternatives left (according to Professor Kibreab) are for him to be a member of the family of a highly trusted government official, or, for him to be one who is himself regarded by the regime as having provided valuable service to it.

26. Accordingly, unless the Appellants were lying about the passports that they held in 2011, and they had in truth travelled to Eritrea upon alternative passports issued to them by another country; then they must have left Eritrea legally upon Eritrean passports endorsed with exit visas in 2011. Their ability to do so is quite simply inconsistent with the claim that the First Appellant is now at any real risk of being perceived as a draft evader, or, one who last left Eritrea illegally. Even if the First Appellant has told the truth about his destruction of the family's Eritrean passports, the Eritrean authorities must hold records of both the issue of the passports, and the exit visas, and there is no reason to suppose that the Appellants cannot give sufficient details for those records to be identified and accessed should they need to so.

The Rule 15(2A) application

27. Ms Soltani argued that the Judge had erred in law because there had been a failure to consider adequately all of the evidence available on the issue of the Appellants' nationality. She argued that the evidence did not point simply to a finding of fact that any member of the family was a citizen of Saudi Arabia. She argued that the state of the evidence should have prompted an enquiry into the existence and content of any copy passports and residence permits held by the ECO, and which must have been inspected by the ECO in the course of processing the entry clearance applications by the family - although she accepted quite frankly that no such enquiry was ever pursued by those who acted on the Appellants' behalf previously.

28. These arguments find their foundation in the contradictory information provided in the visa application forms [VAFs]. In his own VAF the First Appellant had declared himself to be an Eritrean citizen [Q6], living in Saudi Arabia with the benefit of a residence permit (the serial number of which he provided) [Q14]. However he had also identified his passport as Saudi Arabian [Q15], which as Ms Soltani correctly identifies is inconsistent with the claim he also made in that document to hold a residence permit as an Eritrean national. He had declared travel to the UAE and to Sudan in 2009, but he had failed to declare travel to Eritrea in 2011 [Q31]. Answering questions about his wife, he had declared her to be a Saudi Arabian citizen [Q40], although that was not the claim that she made about herself. In relation to his own employment he said that he had been employed in Saudi Arabia by a subsidiary of Unilever since February 1994.
29. In their own VAFs the other Appellants had all stated that they were Eritrean citizens living in Saudi Arabia with the benefit of residence permits, and each had given the serial number of the residence permit issued to them [Q14].
30. The Respondent had conceded that the whole family were citizens of Eritrea, and there is nothing in the Judge's decision to suggest that he went behind that concession. There is also nothing in the Judge's decision to suggest that he made a positive finding to the effect that any of the Appellants was also in truth a citizen of Saudi Arabia. I reject any such argument.
31. The Judge's finding was that the Appellants had not been candid about their past and current status in Saudi Arabia, and that the asylum claims had only been lodged once the First Appellant was satisfied that he was no longer employed in Saudi Arabia [35]. As Ms Soltani accepted, these were conclusions that were well open to him on the evidence, and were adequately reasoned.
32. I also note that Ms Soltani accepts that no evidence was placed before the Tribunal on the Appellants' behalf from either the Saudi Arabian Embassy, or, from Unilever as the First Appellant's former employer to corroborate the account that the First Appellant had given of how he had lost his employment whilst he was on holiday in the UK, and of the family therefore losing their residency in Saudi Arabia. The only evidence in this

respect was a letter from his former employer dated 1 December 2014 stating simply that his employment contract as NPI Logistics Co-ordinator had expired on 30 November 2014. That failed to offer any explanation as to why an employment that had been held since February 1994 had ceased, and left open the possibilities that he had simply resigned, or retired from his position.

33. It follows that there is nothing in the complaint about the Judge's decision that the Appellants now seek to advance. The finding that the Appellants had not established that they were unable to return to Saudi Arabia was well open to the Judge on the evidence before him, it was adequately reasoned, and perhaps most importantly the appeal did not turn upon it. The appeal turned, as the Judge recognised, upon whether the First Appellant was at real risk of harm in the event that he were to return to Eritrea, and as set out above that issue was properly determined.

Conclusions

34. This was very far from being a careless decision. Having had the benefit of hearing Ms Soltani's submissions, I am satisfied that notwithstanding even the limited terms of the grant of permission, there is no merit in either the original grounds, the renewed grounds, or the attack now made. I note that none of the complaints concern the decision upon the Article 8 appeal, all focus upon the finding that the family are able to return to Eritrea in safety.
35. I am not satisfied that the Appellants have established that there is any material error of law in the Tribunal's decision promulgated on 4 January 2016 that requires the decision to be set aside and remade, and the decision to dismiss the appeals is therefore confirmed.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 4 January 2016 did not involve the making of an error of law in the decision to dismiss the appeals that requires that decision to be set aside and remade. The decision to dismiss the appeals is accordingly confirmed.

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**Direction regarding anonymity - Rule 14 Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until the Tribunal directs otherwise the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

**Deputy Upper Tribunal Judge JM Holmes
Dated 2 May 2016**