



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

Appeal Number: AA/10610/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 22 January 2016**

**Decision & Reasons Promulgated
On 26 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**EM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, solicitor, Fountain Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ A Hussain, promulgated on 14 January 2015. Permission to appeal was granted on 27 January 2015 by First-tier Tribunal Judge Fisher.

Background

2. The appellant claimed asylum owing to a fear of returning to Eritrea and indefinite military service. He claimed to have left Eritrea in 1996, aged 2, and thereafter resided in Ethiopia, Sudan and Libya. The appellant's case

was referred to the National Referral Mechanism for a decision as to whether he had been trafficked. The respondent refused the application solely on the basis that the appellant had acquired Ethiopian nationality and could “no longer” be considered a national of Eritrea. All other aspects of his claim were accepted.

3. The FTTJ dismissed the appeal on the basis that the appellant would be admitted to Ethiopia and was not likely to be persecuted or deported to Eritrea. The FTTJ particularly noted the appellant’s failure to apply for Ethiopian travel documents.

Error of law

4. Permission to appeal was sought, firstly, because it was said that the FTTJ applied the wrong standard of proof in relation to Articles 2 and 3 of the ECHR. Secondly, it was argued that the FTTJ failed to provide reasons for his finding that the appellant’s mother was an Ethiopian national and this finding affected the overall findings that the appellant could obtain Ethiopian travel documents. Thirdly, the FTTJ had failed to give reasons as to how the appellant, as an Eritrean national, could acquire Ethiopian nationality when dual citizenship was not permitted under Ethiopian law. Fourthly, it was said that the FTTJ failed to apply country guidance, notably ST (Ethnic Eritrea - nationality - return) Ethiopia CG [2011] UKUT (IAC). Lastly, it was said that inadequate reasoning was provided in relation to paragraph 276ADE of the Rules and Article 8 outside the Rules.
5. Permission to appeal was granted on all grounds, albeit FTTJ Fisher particularly emphasised the first two grounds.
6. The Secretary of State’s response of 6 February 2015 stated that the respondent opposed the appeal as it was considered that the FTTJ appropriately directed himself. The FTTJ was said to have made a slip of the pen with regard to the standard of proof and it was said to be “clear” that the appellant would be treated *de jure* as an Ethiopian national.

The hearing

7. Mr Howard relied on the grounds of appeal and took me to relevant pages of a 567-page bundle, which had been put assembled for the hearing before me. All the material contained therein had been before the First-tier Tribunal.
8. For his part Mr McVeety conceded that the FTTJ had made a clear error as to the standard of proof at [23] of the decision. He further conceded that there was nothing elsewhere in the decision, which would indicate that this was just a slip of the pen. Accordingly, if the incorrect standard had been applied, he accepted that none of the FTTJ’s findings could be preserved and that the entire decision was infected by that error.

Decision on Error of Law

9. I decided that the FTTJ had made material errors of law and set aside his decision in its entirety. My reasons are as follows.
10. With regard to the appellant's claim under Articles 2 and 3 ECHR, the FTTJ had the following to say; *"The appellant bears the burden of proving matters relating to Articles 2, 3 and 8. The standard is a balance of probabilities. In addition, the burden of proving his nationality also rests with the appellant on a balance of probabilities. It is trite law that the lower standard of proof applies; Kacaj applied."* There is no indication elsewhere in the decision and reasons that the FTTJ in fact applied the correct standard. In view of this fundamental error, none of the FTTJ's findings could be considered safe as Mr McVeety acknowledged.
11. For completeness, I briefly consider the other grounds raised in the application. The FTTJ decided at [27] that the appellant's mother was an *"Ethiopian national by birth."* That finding was not supported by reasoning or reference to any evidence before the judge. Mr Howard drew my attention to paragraph 3 of the appellant's witness statement dated 30 December 2014, where he clearly states, *"My mother is not an Ethiopian Nationality (sic). My mother had an Eritrean Passport only."* Evidently, the FTTJ erred in failing to provide any or adequate reasons and failing to take into account relevant evidence before him. That this was a material error can be seen from [36] of the decision, where the FTTJ remarks that one of the reasons that the Ethiopian authorities would give the appellant travel documents is that his mother is Ethiopian.
12. The FTTJ found, at [31] of his decision, that the appellant is an Eritrean national with a right to Ethiopian nationality. Submissions were made to the effect that Ethiopian law did not permit dual citizenship and an article, which appears before me at p565 of the current appellant's bundle was drawn to the FTTJ's attention. The FTTJ failed to engage with that argument or provide reasons as to how the appellant would be able to obtain Ethiopian nationality in addition to his Eritrean nationality.
13. The respondent accepted that the appellant is an Eritrean national and at [35] the FTTJ found that if he were to be returned to Eritrea he would be entitled to international protection. The FTTJ did not consider that the appellant is an ethnic Eritrean. There was a complete failure to consider the country guidance decision of ST regarding the risk of removal to Eritrea of ethnic Eritrean removed to Ethiopia. I am satisfied that the said authority was before the FTTJ. He materially erred in this regard also.
14. Finally, the FTTJ's findings, set out in a single paragraph [44], in relation to Article 8 both within and outside the Rules was manifestly inadequate.
15. An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

“Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. “

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo by any First-tier Tribunal Judge except I Hussain.
- The appeal should be listed for a hearing at Birmingham IAC.
- An interpreter in the Amharic language is required.
- Time estimate is half a day.

Signed

Date: 24 January 2016

Deputy Upper Tribunal Judge Kamara