



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Number: PA/00684/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**Decision and Reasons  
Promulgated**

**On 12 May 2017**

**On 26 May 2017**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL BAGRAL**

**Between**

**AHMED ABDULLAH**

(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hussain, of Counsel, instructed by Halliday Reeves Law Firm

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant appeals against the decision of First-tier Tribunal Judge O'Hanlon (hereafter "FtTJ") dismissing his appeal on asylum and human rights grounds against a decision taken on 27 July 2015 refusing his protection claim.

2. The Appellant is a citizen of Eritrea born on 1 January 1994. He last left Eritrea on 6 September 2011 and travelled to Libya. He entered the UK on 5 May 2015 and claimed asylum. The Appellant claimed that if he returned to Eritrea he would be arrested and ill-treated on account of his familial connection to his father and brother who had been imprisoned and that further, he would be punished for leaving Eritrea illegally and evading military service.
3. There was no dispute by the Respondent as to the Appellant's identity and nationality, but she concluded that his account of past events was not truthful. It was thus not accepted that he left Eritrea illegally.

### **The Decision of the FtTJ**

4. The FtTJ heard oral evidence from the Appellant and found his evidence was not worthy of belief for the reasons he gave at [30] - [36]. The FtTJ proceeded to consider the issue of risk on return in light of the Appellant's profile as a failed asylum seeker, and further considered whether there would be any risk to him for evading military service. The FTTJ referred to the Respondent's country guidance of March 2015 and stated thus at [37]:
5. *"I find that on the basis of the country guidance that if the Appellant were returned any punishment that he may receive for evading national service would be unlikely to include detention or imprisonment and in all likelihood lead to a return to national/military service."*
6. In dealing with the issue of illegal exit, the FtTJ further relied on the Respondent's country guidance which in turn relied on the Danish Immigration Service 2014, and concluded that "[40]....the Appellant could pay the diaspora tax and send a letter of apology to an Eritrean Embassy and that if that were done, the Appellant would not be at risk upon return to Eritrea on account of any **legal** exit." (sic)  
  
[My Emphasis]
7. The FtTJ then dealt briefly with Article 8 as it had not been seriously pursued before him and accordingly dismissed the appeal on all grounds.

### **The Appeal to the Upper Tribunal**

8. The Appellant sought permission to appeal essentially on the basis that the FtTJ erred in finding that the Appellant would not suffer persecution on return to Eritrea as he would only "face punishment for evasion of military service, which would be a requirement to carry out military/national service"; was in error in relying on the Danish Fact-Finding report and failed to properly apply the Upper Tribunal's existing Country Guidance in respect of Eritrea.
9. Permission to appeal was granted by First-tier Tribunal Judge Simpson on 9 December 2016.
10. In a Rule 24 response dated 10 February 2017, the Respondent conceded the FtTJ made an error of fact in relation to the evidence about risk on return to someone who left illegally, and further accepted that, the FtTJ failed to make clear findings as to whether the Appellant did in fact leave Eritrea illegally.
11. Thus, the appeal came before me to decide whether the decision contains a material error of law. At the hearing, Mrs Pettersen in-line with the Respondent's Rule 24 reply conceded the FtTJ materially erred in law and I indicated my

agreement with that concession. I announced my decision setting aside the decision of the FtTJ and it was thus not necessary to call upon Mr Hussain to make submissions.

### **Error of Law**

12. It is not necessary to traverse in detail all the grounds raised by the application given the Respondent's concession that the FtTJ's decision cannot stand, so I set out my reasons briefly below as follows:
- (1) The issue of illegal exit remains an issue of significance in Eritrean cases. That has been reaffirmed by this Tribunal in its decision in **MST & Ors (national service - risk categories) Eritrea CG** [2016] UKUT 00443 (IAC). While the factual error at [40] is likely to be a typing error, in that, the FtTJ meant to refer to illegal rather than legal exit, it is apparent that no clear findings of fact were made on the issue of illegal exit. The FtTJ thereby failed to make findings in relation to a material issue. Such a failure impacts on all that follows resulting in a flawed assessment of risk on return.
  - (2) That assessment is further flawed by the fact that the FtTJ was dealing with an Eritrean national of draft age who says that he last left Eritrea in 2011. The Appellant's evidence was that he was still subject to national service and will be treated as a draft evader on return. That risk is not adequately addressed in the Decision. The FtTJ failed to engage with the categories identified in **MO (illegal exit - risk on return) Eritrea CG** [2011] UKUT 00190 (IAC), reconfirmed by **MST** (supra), and his reliance on the Respondent's country guidance incorporating the discredited findings of the Danish Fact Finding report to support a conclusion that the Appellant will be returned to national service without punishment is clearly contrary to the Tribunal's Country Guidance.
13. Taking those matters as a whole, I find that the decision to dismiss the Appellant's appeal involved the making of a material error of law and thus cannot stand.

### **Decision**

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 of the First-tier Tribunal.

Both parties agreed that the appeal should be reheard by the First-tier Tribunal. I agree. The appeal is remitted to the First-tier Tribunal for a rehearing of the Appellant's protection claim before any judge apart from Judge O'Hanlon.

Signed  
2017

Date :

22 May

Deputy Judge of the Upper Tribunal Bagral