



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00376/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6 March 2018

**Decision &
Promulgated**

On 4 April 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AO

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms H. Aboni, Home Office Presenting Officer

For the Respondent: Mr B. Hoshi, Counsel instructed by BHT Immigration Service

Anonymity:

Unless and until a Tribunal or court directs otherwise, the respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The Secretary of State is appealing against the decision of First-tier Tribunal Judge Bart – Stewart promulgated on 15 December 2017 to allow the respondent’s appeal against the decision of the Secretary of State made on 12 June 2015 to refuse his application for asylum.
2. The issue before the First-tier Tribunal was whether the respondent, who was born on 21 April 1982 and claims to be of mixed Eritrean and Ethiopian heritage, would be at risk of persecution if removed to Ethiopia.
3. A core aspect of the respondent’s case, which was accepted and relied upon by the judge when allowing the appeal, was that there was an outstanding Ethiopian arrest warrant which accused the respondent of being an Eritrean spy. A copy of the arrest warrant, along with a translation, was submitted to the First-tier Tribunal by the respondent.
4. The translation of the arrest warrant is a single page in length. At the top of the translation it states:

“Date: 16th March 1992 [equivalent to 25th March 2000 in Gregorian calendar]”
5. At the bottom of the translation it states:

“Translator’s note: the dates in the original document are in the Ethiopian calendar. The Ethiopian calendar is eight years behind the Gregorian calendar. The days also vary. The translation presents the Ethiopian dates and their corresponding dates in the Gregorian calendar.
6. The Secretary of State appealed against the decision of the First-tier Tribunal on a single ground of appeal. The ground is that the judge erred in law by failing to question the veracity of the arrest warrant given that the translation shows an eighteen year difference between the Julian and Gregorian calendar when there should only be a thirteen day difference between the calendars.
7. In the second paragraph of the grounds of appeal it is stated that the officer lodging the grounds had not had sight of the file.
8. On 8 February 2018, the respondent lodged a comprehensive response to the appeal under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (“The Rule 24 Response”). The Rule 24 Response drew attention, inter alia, to the translator’s note explaining that the date comparison in the translation was between the Ethiopian and Gregorian calendar, not the Julian and Gregorian Calendar.

9. Before me, Ms Aboni acknowledged that the grounds of appeal were misconceived and that the appeal should never have been brought. She noted that she had only had sight of the papers that day.
10. I have no hesitation in dismissing the appeal on the basis that the single ground of appeal is based on a fundamental misapprehension of fact and is entirely without merit. As is made very clear in the translator's note quoted above at paragraph 5, the date in the original document is from the Ethiopian calendar and the comparison of dates is between the Ethiopian and Gregorian calendars. There is nothing in the arrest warrant – nor, indeed, is there anything in the decision of the First-tier Tribunal – to suggest that the Julian calendar has any relevance whatsoever to the appeal.
11. Mr Hoshi stated that he was reserving his position in respect of costs. I have considered whether to make an order on my own initiative pursuant to rule 10(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (“the Procedure Rules”) given my preliminary view (as explained below) that the Secretary of State's conduct of the proceedings may have been unreasonable under rule 10(3)(d) of the Procedure Rules. However, as I did not hear submissions from the parties and Mr Hoshi stated that his position was reserved, I do not consider it appropriate in this case to make an order on my own initiative and it will therefore be for the respondent to decide if he wishes to make an application.
12. My preliminary observations in respect of the reasonableness of the Secretary of State's conduct, which are made having had regard to the recent Upper Tribunal decision *Thapa & Ors* (costs: general principles; s 9 review) [2018] UKUT 00054 (IAC), and which the Secretary of State will need to address if an application for costs is made by the respondent, are as follows:
 - (a) The contention made in the ground of appeal was that there was a flaw in the translator's conversion between the Julian and Gregorian calendar, even though this appears to not have been raised previously by the Secretary of State (at the hearing or elsewhere) and there was nothing in the decision which would indicate the Julian calendar had any relevance to the arrest warrant. In these circumstances, where an argument concerning a document is being raised in the grounds of appeal for the first time, it seems plain that the officer drafting the grounds ought, at the very minimum, to review the document in question. Had the officer taken even the most cursory of glances at the translation, it would have been readily apparent that the ground was misconceived.
 - (b) The Rule 24 Response, which was lodged almost a month before the hearing, explained in clear terms why the ground of appeal was based on a fundamental misapprehension of fact. It appears that no steps were taken between receipt of the Rule 24 Response and the hearing to withdraw or concede the appeal. Ms Aboni's explanation for this was that she had not seen the Rule 24 Response until the day of the

hearing. Whilst no criticism of Ms Aboni is intended, my preliminary view is that it is not reasonable to leave a Rule 24 Response unread until the morning of the hearing. Had the Rule 24 Response been considered earlier, the Secretary of State could have taken steps to obviate the need for the respondent to incur the costs of the hearing in the Upper Tribunal.

Decision

13. The appeal is dismissed.

14. The decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 25 March 2018