



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

Appeal Number: PA/01412/2017

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 15 January 2018**

**Decision & Reasons Promulgated  
On 31 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR AS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Ashwar, counsel instructed by Lei, Dat & Baig solicitors

For the Respondent: Mr. Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a claimed national of Eritrea, born on 1.1.93 in Sudan. He arrived in the United Kingdom on 26.8.15 and claimed asylum. The basis of his claim is that he had no right to reside in Sudan as a consequence of which he was detained in 2011 and deported to Eritrea, where he was detained in mistreated. He escaped to Libya and travelled to the United Kingdom via Italy and France. His asylum application was refused by the Respondent in a decision dated 30.1.17.

2. The Appellant appealed and his appeal came before First tier Tribunal Judge Shergill for hearing on 7.8.17. In a decision and reasons promulgated on 21.8.17, the judge dismissed the appeal, essentially on the basis that he did not accept that the Appellant was a national of Eritrea; he was satisfied that the Appellant is entitled to Sudanese nationality and he was not satisfied that the evidence of the witness, R, was genuine.

3. An application for permission to appeal to the Upper Tribunal was made, in time, on the basis that the judge had erred materially in law in his assessment of the Appellant's nationality and failed to properly engage with the expert opinion of Dr John Campbell.

5. Permission to appeal was granted in general terms by First tier Tribunal Judge Page in a decision dated 13 November 2017.

### *Hearing*

6. At the hearing before me, Ms Ashwar sought to rely upon the grounds of appeal in full. She submitted that the issues are whether the Appellant is entitled to Sudanese nationality and whether he is a national of Eritrea. He was born on the border and his parents emigrated to Eritrea. He spent 3 months in Eritrea at the age of 9 years and time in prison in Eritrea in 2011 and the rest of the time he was in Sudan. The expert, Dr Campbell makes clear that the Appellant is not entitled to Sudanese nationality. At [22] of the expert report he sets out the requirements to obtain nationality and the changes in 1994 as a consequence of which the Appellant must show that his father was born in Sudan and resident in Sudan since 1924. The Appellant's case is that his parents were born in mid 1950's and not in Sudan. At [23] the expert highlighted that changes have jeopardized the right of historic migrants.

7. In respect of Eritrean nationality, the Appellant has had extremely limited exposure to Eritrea thus his knowledge is limited and at [8] and [13] of the expert report he was consistent when tested and [11] the expert confirms that anyone born to a father and mother abroad is an Eritrean national by birth. This is accepted by the Respondent at [21] of the refusal and the Appellant ought to be accepted to be an Eritrean national. No reason has been given as to why the judge's knowledge overcomes that of the expert. The judge demands a certificate of nationality but there is no evidence this exists and there is no application to be made for a certificate of nationality if one is that nationality from birth. Dr John Campbell has been cited with approval in Country Guidance cases. There needed to be good reasons for the judge to depart from the findings of the expert. The judge has failed to engage with the expert report. The Appellant's asylum interview was conducted in Tigrinya and the witness, R, was granted refugee status in his own right as an Eritrean national. Ms Ashwar asked for the decision to be set aside and that there was new evidence the Appellant would like to present.

8. In his submissions, Mr Bates stated that the record of the Appellant's evidence at [16] of decision records that he claims his parents fled Eritrea 40 years ago. However, at [21] of expert report it is clear that nationality is

possible based on a 10 year period of residence. The Appellant was born in Sudan and the expert does not seem to have assessed whether his parents obtained Sudanese nationality. There is no distinction between the Sudan Nationality Act 1994 expert report and the extract cited in refusal letter at [28]. The Appellant needed to take reasonable steps to show he is not such a national: [32] and [34] and there has been non compliance with the reasonable steps set out in MW [2016] UKUT 00453 (IAC) at [31].

9. The judge dealt with the evidence put forward by the Appellant and his witness at [40] onwards and noted various discrepancies between their evidence as a result of which he concluded that he had not put forward as a genuine witness at [45] and there had been no mention of the Appellant's family in his statement in support of his own asylum claim. [45]. The judge was clearly of the view that it was only as a result of the evidence served by the Home Office Presenting Officer on the day otherwise the witness would have maintained position he had met the Appellant. The Appellant failed to approach either the Sudanese or the Eritrean Embassy to confirm his nationality, contrary to the caselaw.

10. Mr Bates submitted that it was not accepted that the expert report was reliable for the reasons given by the judge, who was not satisfied that the expert has dealt with all the issues and has given reasons for his conclusion at [31] and [32]; [17]-[18] and [37]-[48] in respect of the Appellant's credibility. It had been open to the judge to conclude that the Appellant has not made out his case. His parents may have obtained nationality before the Appellant was born.

11. In her reply, Ms Ashwar stated that she continued to rely on the grounds already submitted. She submitted that the case essentially boils down to the issue of nationality.

12. I reserved my decision, which I now give with my reasons.

### *Findings*

13. The judge's findings on the issue of nationality are set out at [16]-[29] of the decision and reasons and in summary comprise the following:

(i) he was satisfied that even if the Appellant does not know anything of his mother's status or whether she had identification documents it does not mean that his family members did not or do not have such documents or a right to status (in Sudan) [18];

(ii) the expert report makes clear that a significant number of Eritrean refugees in Sudan were born in Sudan and they must have some status there given that they are able to work and can obtain identification if they register with the local authorities [19];

(iii) in respect of Eritrean nationality it is clearly envisaged that an individual has to apply for a certificate of nationality and as the Appellant has not done so it leaves the question open as to why the Eritrean

authorities would treat him as a national in the absence of such a document [20];

(iv) for these reasons the judge was not satisfied that the Appellant is solely a national of Eritrea and at its highest it may be he is entitled to Eritrean nationality rather than currently holds that nationality [21];

(v) the evidence put forward by the Respondent and in the English translation of Sudanese legislation is that the Appellant would have been able to claim Sudanese nationality once he became 18 years of age [23]-[24];

(vi) in respect of the expert evidence the judge was not satisfied that information relating to the secession of South Sudan can found a proper basis for conclusion in a case relating to Eritrea [25];

(vii) [24] of the expert report suggests there is a route to Sudanese nationality and the matter is not black and white but he has not been provided with a full text of the legislation which generally has caveats and exceptions [26];

(viii) the expert has simply not dealt with the assertion by the Respondent that ancestors from his father's side were residing in Sudan since 1.1.56 given the Appellant's claim that his mother had been residing there for 40 years because she was very old [28];

(ix) it is unclear whether section 4(1)(b) of the Sudanese Nationality Act 2004 is to be read in a manner which requires both (i) and (ii) to be met or whether either/or can apply and the expert has not dealt with why the Appellant does not qualify under (i) given he was born in Sudan [28];

(x) consequently the judge rejected the expert's view at [26] that the Appellant is not entitled to Sudanese nationality and found that the Appellant is so entitled [29].

14. I have concluded that the First tier Tribunal Judge materially erred in his assessment of the key issue of the Appellant's nationality. My reasons are as follows:

14.1. As Ms Ashwar submitted, Dr Campbell is an expert of some repute, whose evidence and reports have featured in five country guidance decisions of the Upper Tribunal. Whilst the judge was not obliged to accept the views of the expert, it is trite law then if he reached a different conclusion, it was incumbent upon him to give adequate reasons for so doing.

14.2. I do not consider that the judge has given adequate reasons for reaching different conclusions from the expert. His findings at [18]-[20] as to the Appellant's entitlement to Eritrean nationality are essentially speculative and based on substituting his own view for that of the expert e.g. as to the rights of Eritrean refugees in Sudan. It is clear from the terms of Article 2 of the Eritrean Nationality Proclamation (No 21/1992) set out at [11] of the expert report that

it is widely drafted to encompass those born not only in Eritrea but also abroad to either a father or a mother who is of Eritrean origin. The judge accepted that the Appellant's parents are Eritrean; that the Appellant is a Tigrinya speaker and may be entitled to Eritrean nationality, but in so finding failed to engage with the text of Eritrean nationality law and the expert report. In respect of the issue of a certificate of nationality, whilst the Appellant appears to be entitled to such a certificate, upon application, there does not appear to be any evidential basis that such a certificate is required to prove Eritrean nationality, contrary to the judge's finding at [20].

14.3. As to the judge's findings on the Appellant's entitlement to Sudanese nationality, it is clear from the expert report at [20] that Article 4(1)(b) of the Sudanese Nationality Act 2004 requires both conditions (a) and (b) to be met i.e. there needs to have been both residence of the individual and paternal ancestral residence in Sudan since 1957. It follows that the fact that the Appellant's mother may have resided in Sudan for 40 years is irrelevant given that it is clear from Sudanese nationality law that it is the paternal ancestors who count. In any event, at [18](c) the expert sets out the fact that if an individual lacks the relevant civil documentation *viz* birth certificates or identity papers it is not possible to prove that a parent, grandparent or great grandparent was born in Sudan. The judge failed to take this evidence into account or make findings in respect of it.

#### *Decision*

15. I find material errors of law in the decision of First tier Tribunal Shergill. I remit the appeal for a hearing before the First tier Tribunal to be listed before a judge other than First tier Tribunal Judge Shergill. Given the absence of any challenge to the findings in respect of the witness R, I preserve those findings, however, the issue of the Appellant's nationality remains live and requires determination.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

30 January 2018