



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05903/2017

THE IMMIGRATION ACTS

Heard at Field House
On 10th July 2018

Decision & Reasons Promulgated
On 06th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

[G H]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman of Counsel

For the Respondent: Mr S Kotas, Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 5th January 1948 is a citizen of Eritrea. The Appellant was represented by Ms Gherman of Counsel. The Respondent was represented by Mr Kotas a Presenting Officer.

Substantive Issues Under Appeal

2. The Appellant had claimed asylum on 10th November 2016 and his asylum claim was refused by the Respondent by letter dated 6th June 2017. The Appellant lodged an appeal against that decision and his appeal was heard by Judge of the First-tier Tribunal Maka sitting at York House on 24th January 2018. The judge had dismissed the Appellant's appeal on all grounds.
3. Application for permission to appeal was made out of time by Ms Gherman. Judge of the First-tier Tribunal Buchanan on 15th May 2018 allowed the grounds to be received late although no reason had been given for the late tendering of the grounds. He focussed on Ground 2 of the three grounds raised and found there was an arguable error of law and did not limit the grounds that could be pursued on appeal. Directions were issued for the Upper Tribunal to firstly decide whether an error of law had been made by the First-tier Tribunal and the matter comes before me in accordance with those directions.

Submissions on Behalf of the Appellant

4. Ms Gherman who had drafted the Grounds of Appeal essentially relied upon those grounds which amount to three separate matters. First it was submitted that the judge materially erred by not allowing the application for an adjournment. The second ground it was submitted disclosed a flawed decision on the position in Eritrea in that prison conditions amounted to a breach of Article 3 of the ECHR. Finally in Ground 3 it was said that the credibility findings were simply insufficient in this case.

Submissions on Behalf of the Respondent

5. Mr Kotas submitted that Ground 1 had little merit. Ground 2 I was referred to the contents of paragraphs 54 and 56 of the decision which made the judge's position clear and finally it was said that the reasons given and the adverse credibility findings reached had been adequately expressed by the judge.
6. At the conclusion I reserved my decision to consider the submissions and the evidence in this case. I now provide that decision with my reasons.

Decision and Reasons

7. The first ground raised is that the judge should have allowed the request for an adjournment. The judge had allowed Counsel time on the day to complete a conference and her request for an adjournment came later that day. It does not appear to have been raised at the beginning of the day. That adjournment request was based on essentially the same reasons that had been given in July 2017, six months earlier. It was a request for the Appellant to be given time to procure further evidence from family members. The Home Office had objected to that adjournment application.
8. The judge was entirely correct in refusing the application. He had noted at paragraph 10 that a similar request had been granted in July 2017 such request being made by the

same Counsel that appeared at the hearing in January 2018. The notice of the hearing date of 24th January 2018 had been issued as early as 4th August 2017 providing the Appellant, his solicitors and Counsel with ample time and notice to collect any additional evidence upon which the Appellant sought to rely. The judge had further noted that the same Counsel on the previous occasion in July 2017 had asserted that only three weeks was required to obtain that evidence. It may well be as inferred within the judge's decision that it was that relatively short period of time that had procured the success of the adjournment application in July 2017. Nothing was provided to this judge to explain why, nearly seven months later, no progress had been made in procuring the alleged additional evidence. The judge was perfectly entitled to conclude as he did at paragraph 11 that the interests of justice and the overriding objective did not justify any further delay. Indeed it would have been surprising if any judge had concluded differently.

9. Ground 2, as pleaded by Counsel begins by stating the judge's finding that the Appellant's assistance in his cousin's evasion of military duty was a financial transaction that the Eritrean government was permitted to prosecute as they had a right to enforce national service.
10. Regrettably the Grounds of Appeal, whilst referring to part of paragraph 54 of the judge's decision, have taken out of context that which was said by the judge which careful reading of the decision as whole would have discovered. The judge already at paragraph 51 had noted the Appellant had spent most of his life in Saudi Arabia and had been deported back to Eritrea from Saudi in May 2016. He had throughout his time in Saudi Arabia travelled back to Eritrea each year. The judge had already made, for reasons given, adverse credibility findings upon core elements of the Appellant's claim. He then began paragraph 54 by stating "even if I accept, which I do not, the Appellant financially assisted...". Those initial key words in paragraph 54, are significant, indicating the judge did not accept the Appellant's account of assisting his cousin. That is consistent with the findings made and reasons given throughout the decision. That point is reinforced if one reads paragraph 56, where the judge said "since I do not accept the Appellant's involvement in helping his uncle's children I do not accept his arrest and detention". It is entirely clear therefore that the judge did not accept as credible the whole of the core features of the Appellant's case and therefore the Appellant did not face prosecution or persecution and there was therefore no threat of imprisonment and therefore prison conditions in Eritrea were entirely irrelevant to the Appellant's case. It is regrettable where Grounds of Appeal contain only partial references to that which is said by a judge and inadvertently thereby produce a less than accurate representation of the decision.
11. Finally the credibility findings made by the judge which begin at paragraph 50 of the decision were reasoned and adequate. He was therefore entitled to conclude as he did that this 70 year old man was not at risk on return to Eritrea. That was the conclusion open to the judge based on the evidence presented and a decision for which proper and adequate reasons were provided.

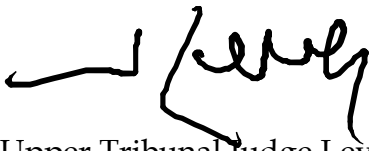
Notice of Decision

12. There was no error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed



Date



Deputy Upper Tribunal Judge Lever

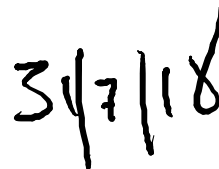
TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed



Date



Deputy Upper Tribunal Judge Lever