



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

Appeal Number: PA/06273/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 September 2018**

**Decision & Reasons  
Promulgated  
On 05 November 2018**

**Before**

**THE HONOURABLE LADY RAE  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**MR M A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms G Brown instructed by Harrow Law Centre

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant claims to be a citizen of Eritrea, but the respondent considers him to be a citizen of Ethiopia. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 21 June 2017 refusing to grant him asylum or humanitarian protection and making a deportation order against him.

2. It seems that the appellant arrived in the United Kingdom in February 2005 and claimed asylum on the same day. He claimed to be 16 or 17 years of age but an age assessment decided that he was 20 years old. His asylum application was refused on 17 March 2005 and he lodged an appeal which was dismissed on 28 June 2005. The judge who heard his appeal in 2005 did not accept the appellant's claim to be Eritrean. At his screening interview he had indicated that he was of Ethiopian nationality. It was only after the age assessment was conducted that he corrected his date of birth to 7 August 1984. There were significant discrepancies in his account and the judge found these to be major matters which affected the very core of his claim. His account about military service was found to be a fabrication. The judge found that he had fabricated an account of military service in the hope of persuading the authorities to accept his account of Eritrean nationality. He said he could speak Tigrinya but was fluent in Amharic. The judge was satisfied that this was because he was Ethiopian and not Eritrean.
3. It was common ground before the judge in the appeal under challenge today that if the Tribunal found that the appellant was genuinely an Eritrean citizen then as a Pentecostal Christian and army deserter he would be at risk of persecution on return. If he was found to be Ethiopian then there was nothing to show he would be at risk from the Ethiopian authorities.
4. The judge first considered whether the appellant had committed a particularly serious crime as defined in section 72(2) of the Nationality, Immigration and Asylum Act 2002 on the basis that the respondent considered him to have been convicted of a particularly serious crime and to constitute a danger to the community of the United Kingdom. The judge noted the appellant's conviction in 2012 of wounding with intent to do grievous bodily harm for which he was sentenced to ten years' imprisonment. It was not disputed that this was a particularly serious crime as defined in section 72(2), and the judge went on after considering the evidence not to be satisfied that the appellant had rebutted the presumption that he constituted a danger to the community. There is no challenge to this aspect of the judge's decision.
5. The judge went on to consider the evidence as to the appellant's nationality. He claimed that his asylum and human rights claim should be reconsidered because he had provided new evidence which had not been before the judge in 2005, his birth certificate from Ethiopia and a letter from the Eritrean Community Centre dated 15 August 2017.
6. As regards the latter, the judge attached little weight to it, noting what was said about how the community centre had verified the appellant's nationality based on their assessment of him. There was no mention of him being involved with the community or that he had been absent from the community for at least five years whilst in prison. The judge also considered it to be highly significant that no-one from the Eritrean community had attended the hearing to support the appellant. The judge

did not accept the appellant's claim that senior members of the community would not come forward to give evidence on his behalf when he had come out of prison.

7. As regards the Ethiopian birth certificate provided, the respondent was criticised by Ms Brown, who also appeared below, for not producing the original and not giving the appellant an opportunity to authenticate it. The judge noted that the birth certificate had been issued on 21 November 1992 and that there was no logical explanation for this. The appellant thought that it was perhaps something to do with his school registration and then suggested it might have something to do with the Ethiopian calendar. The judge said that clearly if the birth certificate had been issued prior to the Eritrean independence in 1991 the nationality of his parents on the birth certificate would obviously have been Ethiopian and was left therefore to consider whether the reason it was dated after Eritrean independence was so the nationality of his parents could be entered as Eritrean for the purposes of the appeal. The judge was therefore not satisfied that it was a genuine document and placed little weight on it.
8. He considered the argument that the appellant had been accepted as Eritrean by the Ethiopian Embassy, but it was pointed out that the appellant had gone to the Embassy and claimed he was Eritrean and the birth certificate provided to the Ethiopian Embassy by the respondent stated that the appellant's parents were Eritrean. The Ethiopian officials at the Embassy would therefore naturally accept his claim to be Eritrean. The judge also noted the appellant's previous conviction for using a false identity document in 2008 when he was in prison for fourteen days. It was noted that even at the hearing the appellant had sought initially to deny that offence.
9. The judge also did not find credible the circumstances in which the appellant claimed the birth certificate was obtained from Ethiopia. He said that a stranger he met in Sheffield happened to be going to Ethiopia and offered to obtain the birth certificate for him stating that he knew someone who worked in the Registry who could do this. This person did not attend court to give evidence. The appellant had said he tried to trace him but was unable to do so. The judge considered the explanation for this to be that the person did not exist or that he had obtained the birth certificate in nefarious circumstances. The judge therefore placed little weight on either of the documents belatedly produced by the appellant, as the judge put it, he found no reason to disagree with the earlier findings of the judge in 2005 that the appellant was Ethiopian and not Eritrean. He went on to consider the situation under the Immigration Rules and also outside and found that there was no reliable Article 8 claim. The appeal was therefore dismissed on all grounds.
10. The appellant sought and was granted permission to appeal against this decision, first on the basis that it was not open to the judge not to accept that the birth certificate was genuine, bearing in mind that the evidence as

evidenced by the GCID case record notes indicated that the respondent had understood the birth certificate to be a genuine document, bearing in mind that the birth certificate had been submitted to the respondent under cover of a letter of 21 May 2007, the conclusion that the date of 21 November 1992 on the birth certificate may have been entered for the purposes of the appeal was therefore clearly unsustainable and simply wrong, and it was wrong to state as the judge had that the appellant had been accepted as an Eritrean by the Ethiopian Embassy: rather the Embassy had not accepted that he was an Ethiopian national.

11. Permission to appeal was granted on all grounds.
12. At the hearing we explored with the representatives whether it would assist and if it were possible for us to examine the original birth certificate. Ms Brown's view, with which we agreed, was that it would clearly be of assistance, but, Mr Deller having conducted an exhaustive search of the file and having made telephone enquiries to the Home Office was unable to assist. It seemed clear that though the Home Office file still contained the original letter sent by the representatives to which the birth certificate was attached, the document provided was no longer on the file or to be found elsewhere and therefore all we had was the photocopy in the bundle.
13. Ms Brown relied on and developed the points made in the grounds of appeal and in particular in her skeleton argument.
14. She argued that the judge had erred in concluding that the birth certificate had been submitted for the purposes of the appeal. In fact it had been submitted a long time before the appeal, in 2007. It would be clearer to say that it was new in that it was an issue raised after the earlier decision of the judge in 2005. It was an error of fact affecting the credibility assessment.
15. The next issue of concern was whether the Secretary of State had accepted that the birth certificate was a genuine document. Ms Brown accepted that the term "original" did not mean that it was genuine. In the context of what had happened in this case it seemed the Secretary of State was provided with an original document and treated it as genuine based on the Secretary of State's action in providing it to the Ethiopian authorities as a document on the basis of which the appellant could legitimately be removed from the United Kingdom. If he thought it was false that the appellant was not entitled to it, the Secretary of State's action in presenting it to the Ethiopian authorities was questionable. On that basis it was argued that it had been treated as genuine. The GCID case notes were also of relevance to this. It was a protection claim and the standard of proof was low and the evidence supported what the appellant said about his nationality. It was not a forensic assessment by the caseworkers but there was no indication in the GCID notes of any concerns about the document which was said to be an original. The

Secretary of State had acted as though it was a genuine document and applicable to the appellant in presenting it to the Ethiopian authorities.

16. There was also the point made at paragraph 10 of Ms Brown's skeleton argument that at the very least the entries in the notes and actions of the respondent supported the contention that the birth certificate was genuine and that it was referred to by the respondent as "an original", and secondly, if the respondent did not believe it was genuine, it appeared that the respondent was of the view that the appellant's removal from the United Kingdom on a document to which he was not legitimately entitled. The Secretary of State would have been clear that the appellant would go to the Ethiopian Embassy and claim to be Eritrean as the nationality was in dispute. The Ethiopian authorities had been sent the birth certificate and had been asked to issue an emergency travel document and could not do so as they did not accept that the appellant was an Ethiopian national. It was wrong to criticise the appellant for this.
17. As regards prejudice to the appellant, this arose from the respondent's submissions made at the hearing before the judge being in direct contrast to the notes in the GCID case record. As the GCID record notes it appeared to indicate the respondent's acceptance of the birth certificate as genuine and there was no need to request the birth certificate, on the assumption that the respondent still had it in his possession.
18. As was pointed out at paragraph 22 of the skeleton, the appellant had complied with the emergency travel document process and done all that he reasonably could to substantiate his nationality as required by law. The GCID notes showed what has been said by the Ethiopian Embassy. The birth certificate was sufficient to discharge the burden of proof on the appellant as regards his nationality. It had been wrongly assessed by the judge. He had done everything he reasonably could to establish his nationality.
19. Finally, with regard to paragraph 17 of the skeleton argument, the judge had misstated the situation. The appellant had never claimed to be accepted as Eritrean by the Ethiopians, just that they did not accept he was Ethiopian and it was not for them to say whether he was Eritrean or not. He could not be required to assert the nationality the Secretary of State claimed he had.
20. In his submissions Mr Deller argued that the birth certificate had been booked in as an original document and he could only speculate as to what had been thought, but it seemed to be a clerical booking of a document, not an assessment that it was what it was claimed to be. The 2010 decision did not accept that the appellant was Eritrean. It might be that the judge had misstated the purpose for which the document was procured. Plainly it was not provided for the purposes of the appeal before the judge.

21. As regards the secondary question of why if the Secretary of State did not accept it was a genuine document it was issued with regard to contact with the Ethiopian Embassy, Mr Deller could not say why but it stood as a record of what the appellant said about his name and date of birth. He could not say why it had been raised with the Ethiopian Embassy. It was difficult to see that it would have been accepted as genuine and then sent to the Ethiopian Embassy. All the indicators pointed away from the Secretary of State speaking with two voices and not accepting the appellant as Eritrean, but taking administrative action accepting that he was. It was accepted that the document had not been provided for the appeal, but in order to deal with problems arising from the earlier appeal and that seemed to be what the judge might have meant.
22. As regards ground 3, it was necessary to assess how far a lack of clarity or ambiguity on the part of the judge was material to the decision as a whole. It was not right that the Ethiopian authorities had said the appellant was Eritrean, but this did not make a material difference.
23. By way of reply Ms Brown acknowledged that with regard to the judge's assessment of the timing of the birth certificate that was not now a main point. The decision lacked clarity in that respect. It was important however that the appellant was able to understand the decision. The Secretary of State was equivocal about the birth certificate and proper reasons were needed.
24. As regards the failure to provide a skeleton argument the Tribunal might wish to examine its powers under Rule 10 of the Procedure Rules in that respect.
25. If the Tribunal agreed with Ms Brown and there was to be a rehearing, then Professor Campbell had been approached and would be able to provide a report by early 2019.
26. We reserved our decision.
27. The judge properly took as his starting point the earlier decision dismissing the appeal and not accepting the credibility of the appellant's claim. There were two new pieces of evidence, the birth certificate and the letter from the Eritrean Community Centre.
28. We do not understand Ms Brown to launch a challenge of any substance to the findings with regard to the letter from the community centre. At paragraph 45 of his decision the judge fully reasoned his conclusions as to why he had placed little weight on that letter, in particular noting the absence of any involvement with the community, and lack of any reference to the appellant's absence for at least five years whilst in prison, and the absence of any member of the community to speak on his behalf, the reason for that absence given by the appellant being found to lack weight by the judge.

29. The key point therefore is the issue of the birth certificate that the appellant produced in 2007. It is common ground that if he is found to be Eritrean he is at risk on return and cannot be returned to Eritrea for international protection reasons. Equally if he is properly found to be Ethiopian he can be returned there since there is no issue of risk in Ethiopia.
30. As can be seen from the above, we had concerns about the copy document provided and unfortunately it has not been possible for the original to be produced by the respondent. We are very grateful to Mr Deller for the care he took in trying to ascertain the whereabouts of the original, and no blame can be attached to him in any respect, but it is, to say the least, unfortunate that the Home Office appears to have lost a document of significance which it has had in its possession for some eleven years.
31. The first concern that the judge had was that the birth certificate was issued on 21 November 1992, albeit that the appellant was said to have been born on 8 July 1984. The appellant had contrasting explanations as to why it might have been issued when it was and the judge's view that there was no logical explanation for that has force. The judge speculated as to whether it was issued when it was because it postdated Eritrean independence, but that can be no more than speculation.
32. Another matter that weighed significantly with the judge was the fact that the circumstances in which the appellant claims the birth certificate had been obtained from Ethiopia were regarded as highly improbable. He would have had to accept the appellant's claim that he had met a stranger who happened to be going to Ethiopia and who obtained the birth certificate for him but could no longer be contacted and was therefore not in attendance at the hearing.
33. There has been criticism of the judge's wording at paragraph 48 where he said as follows: "In conclusion, as I have placed little weight upon either of these two documents lately produced by the appellant ...".
34. It seems to us that although the wording there is somewhat ambiguous, it can be seen from the decision letter of 11 June 2010, which was before the judge, that the birth certificate was submitted on 21 May 2007. We do not think it can properly be interpreted from the judge's wording at paragraph 48 that he regarded the birth certificate as having been produced for the purposes of the hearing, as has been contended on the appellant's behalf. The word "lately" is somewhat ambiguous, but in the context immediately addressed thereafter of the judge finding no reason to alter the findings of the First-tier Judge who heard the appeal in 2005, we are satisfied that he meant no more than that the document had been produced subsequent to that decision, which is of course the case.
35. Not unconnected to this is the estoppel issue raised by Ms Brown. It was an argument she raised in submissions before the judge and has repeated

before us. It is based on the GCID notes which, among other things, contain DD15, a reference to “original birth certificate returned to SYRC as subject can go on EUL”, further references to the birth certificate at DD16 and the Ethiopian Embassy’s willingness to conduct an interview to confirm his nationality if he was claiming to be Ethiopian. It was noted in the notes that the birth certificate stated the appellant’s parents were from Eritrea, but it was issued in Addis Ababa. At D19 there is a reference to the original birth certificate being forwarded as requested by proof of delivery system, and the point is also made that the Ethiopian authorities to whom the birth certificate was provided by the respondent raised no issue in respect of its authenticity or provenance.

36. We agree with Mr Deller that the record relating to the birth certificate is no more than a clerical booking in of a document rather than a considered evaluation. We do not consider that the Secretary of State equivocally represented his acceptance of this as proof of the appellant’s nationality. Our view on the point has not changed by dint of the fact that it was put forward to the Ethiopian Embassy as a document for consideration of the appellant’s nationality as Ethiopian. The respondent did not accept the appellant’s claim to be Eritrean, and the judge had not accepted that in 2005. Speculation is dangerous, and Mr Deller accepted it was not really possible to infer why it was in light of the Secretary of State’s disbelieving the appellant’s Eritrean nationality that a document in which it was said his parents are Eritrean was put to the Ethiopian Embassy at all. It is however relevant at this point to bear in mind the matter noted by the judge in 2005 that at his screening interview the appellant said that his nationality was Ethiopian. He has of course resiled from that position subsequently, but we have not seen anywhere any explanation as to why that information was given by him in the first instance.
37. We must bring these matters together. We do not consider that the judge has been shown to have erred in law in his assessment of the appellant’s nationality. He was entitled not to accept the credibility of the birth certificate as a document purporting to show the appellant’s nationality as being Eritrean, bearing in mind his history of untruthfulness, and a lack of satisfactory explanation of how it was the birth certificate was obtained and the lack of explanation as to the date of issue of the certificate. We do not consider that he was expressing the view that the document had been produced for the purposes of the hearing, and nor do we consider that his speculation as to the date towards the end of paragraph 46 of his decision was anything more than speculation and did not go to mar the quality of his reasoning overall. We do not accept that the Secretary of State is in any sense estopped from denying his assertion that the appellant is Ethiopian on the basis of what was said in the GCID notes about the birth certificate and its proffering to the Ethiopian authorities. Accordingly, we do not accept that the judge has been shown to have erred in law in any respect with regard to his findings as to the appellant’s nationality or otherwise. Accordingly, we find no error of law in his decision, and that decision dismissing the appeal is maintained.



**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 his comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date: 24<sup>th</sup> October 2018

Upper Tribunal Judge Allen