



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/11017/2016**

**Appeal Numbers:**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On December 22, 2017**

**Decision & Reasons  
Promulgated  
On January 03, 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

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

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Pratt (Solicitor)  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I make an anonymity direction in this matter.
2. The appellant is a citizen of Eritrea. He entered the United Kingdom on October 14, 2015 and claimed asylum. The respondent refused his application on September 26, 2016 under paragraph 336 and 339F HC 395.
3. The appellant appealed that decision on October 10, 2016 and the appeal came before Judge of the First-tier Tribunal Robson (hereinafter called the

Judge) on March 23, 2017. In a decision promulgated on April 4, 2017 the Judge dismissed the appeal on all grounds.

4. The appellant appealed that decision on April 7, 2017 arguing the Judge had erred based on the acceptance the appellant was of draft age and an acceptance the appellant had left Eritrea illegally. Permission to appeal was given by Judge of the First-tier Tribunal Davies on July 31, 2017. The respondent filed a Rule 24 response dated September 19, 2017 albeit Mr McVeety did not rely on this at the hearing.
5. The case came before me on the above date. Mr McVeety accepted that as the Judge accepted the appellant had not left Eritrea legally and he was of draft age then following the country guidance decision of MST & Others (national service-risk categories) Eritrea CG [2016] UKUT 00443 (IAC) the appellant was likely to be at risk of persecution. He saw no reason to depart from the decision of MST and Mr Pratt agreed.
6. Headnote 10 of MST states-

“... a person whose asylum claim has not been found credible, but who is able to satisfy a decision-maker (i) that he or she left illegally, and (ii) that he or she is of or approaching draft age, is likely to be perceived on return as a draft evader or deserter from national service and as a result face a real risk of persecution or serious harm.”
7. Although the Judge found the appellant’s core account lacked credibility, the fact he went onto find that the appellant’s departure was illegal and taking into account his age I am satisfied the Judge’s finding, that he was not at risk of persecution, did amount to an error in law. Mr McVeety accepted that returning the appellant to Eritrea would amount to persecution for the reasons contained in the grounds of appeal and did not oppose the remaking of the decision.

**NOTICE OF DECISION**

8. 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 Judge’s decision and allow the appeal on both protection grounds and article 3 ECHR.

Signed

Date 22/12/2017



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

No fee award was made because no fee was payable.

Signed

Date 22/11/2017

A handwritten signature in blue ink that reads "SPAR". The signature is written in a cursive style with a horizontal line underneath the letters.

Deputy Upper Tribunal Judge Alis