



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01724/2020 (V)**

THE IMMIGRATION ACTS

Heard at : Field House

On : 26 August 2021

**Decision & Reasons
Promulgated**

On: 3 September 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**GST
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chakmakjian, instructed by Kesar & Co Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

3. The appellant is a citizen of Eritrea born on 27 July 1981. He claims to have arrived in the UK on 3 January 2008. He claimed asylum on 4 January 2008 but then absconded until 5 December 2008. His asylum claim was refused on 9 December 2011 and his appeal against that decision was dismissed by the First-tier Tribunal on 9 February 2012. He was refused permission to appeal to the Upper Tribunal and he became appeal rights exhausted on 24 May 2012. He made further submissions on 31 July 2013 which were refused on 15 April 2015 and then further submissions on 19 June 2018 which were refused on 26 June 2018 as not amounting to a fresh claim. Following a challenge to that latter decision in a judicial review claim the respondent agreed to withdraw the decision and make a new decision in the appellant's claim, which she did on 28 January 2020. That decision is the subject of these proceedings.

4. By way of background I refer back to the appellant's appeal before the First-tier Tribunal on 24 January 2012, where his claim was set out in the judge's decision promulgated on 9 February 2012. The appellant's claim was that he had lived in Sudan between the ages of 4 and 13 on account of the war in Eritrea and to have been called up to do military service in Eritrea at the age of 19. He completed 2 weeks military service and then went to university before completing his military service by working for the government health department as a laboratory technician in a hospital, supervising 3 graduates. He claimed to have been introduced to the Pentecostal Christian religion by a doctor at the hospital and to have become a Pentecostal Christian in 2004. He married in April 2005. In December 2006 he attended at another health centre for an assessment with 3 graduates but one escaped and fled Eritrea and he was held responsible for the escape and was accused of having helped him escape. He was arrested on 24 December 2006 and detained in prison where he was questioned and beaten. He managed to escape on 20 February 2007 and he walked to Sudan where he stayed with an uncle before travelling to Libya, Italy, France and then the UK. He feared returning to Eritrea because he was Pentecostal Christian, an escapee from detention and someone who had exited the country illegally.

5. The judge, Judge Gordon, did not accept the appellant's account of having been detained and escaped, she did not accept his claim to have converted to Pentecostal Christianity and she did not accept that he had left Eritrea illegally. She concluded that he had completed his military service or been exempted from it and that it was very likely that he had left Eritrea with an exit visa. She did not accept that he was at any risk on return and she dismissed the appeal on all grounds.

6. The respondent relied upon the judge's adverse findings in her decision of 28 January 2020 and rejected the appellant's claim to have converted to the Pentecostal Christian religion, to have deserted the army and to have left

Eritrea illegally. The respondent did not accept that the appellant would be viewed as a draft evader on return to Eritrea and did not accept that he was at risk on return. It was not accepted that his removal would breach his human rights.

7. The appellant appealed against that decision and his appeal came before the First-tier Tribunal on 27 October 2020 and was heard by Judge Sullivan. The appellant was not legally represented before the judge. The judge heard from the appellant as well as from his friend, MT and she also had before her an expert report from Professor Kibreab. The judge did not accept that the appellant had converted to the Pentecostal Christian religion and did not accept that he would be at risk of persecution on religious grounds in Eritrea. She did not accept that the appellant had told the truth about being arrested in December 2006 or about the circumstances of his departure from Eritrea and she did not accept his account of having been detained and of escaping from custody in February 2007. She was not satisfied that the appellant would be regarded in Eritrea as an escapee from prison custody or as a person who had fled Eritrea to avoid national service, she did not accept that he had left Eritrea illegally and she did not accept that he would be at risk on return as a failed asylum seeker or on any other basis. She accordingly dismissed the appeal on all grounds.

8. The appellant sought permission to appeal the decision to the Upper Tribunal on the grounds that the judge had erred in her treatment of the expert evidence, by failing to consider relevant factors and applying too high a standard of proof; that she had taken an unlawful approach to plausibility; and that she had erred in her approach to section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

9. Permission to appeal was granted by the First-tier Tribunal and the matter came before me.

10. Mr Chakmakjian advised me that Mr Walker was in agreement that the decision contained a material error of law and had to be set aside, in relation to the challenge set out in the first part of ground 1. That challenge related to Judge Sullivan's decision at [23(e)] whereby she declined to make a finding on a critical issue as a result of not having a previous asylum decision letter before her. That in turn related to [20] of the decision of 9 February 2012 where Judge Gordon, in the earlier asylum appeal, rejected as lacking in credibility the appellant's account of having walked from Eritrea to Sudan in light of country information relied upon by the respondent in the reasons for refusal decision of 9 December 2011. That country information was disputed and undermined by the expert country report of Professor Kibreab, but Judge Sullivan, despite treating Professor Kibreab as an expert, declined to engage with the matter because she did not have the 9 December 2011 reasons for refusal letter before her. Mr Chakmakjian submitted that rather than declining to deal with part of the expert's report which challenged a critical matter relied upon by the respondent and the previous Tribunal, the judge ought to have requested a copy of the 9 December 2011 letter so that the matter could have been

addressed. Mr Walker agreed with Mr Chakmakjian that that was a material error which undermined Judge Sullivan's adverse credibility findings in relation to the appellant's journey from Eritrea and which infected her credibility findings as a whole.

11. Mr Walker agreed that, in light of that material error, and considering also that the appellant was not represented before Judge Sullivan, the decision had to be set aside in its entirety and the matter remitted for a completely *de novo* hearing before another judge, with no findings preserved.

12. In light of Mr Walker's concession, there is no need for me to set out any detailed reasoning and I therefore set aside Judge Sullivan's decision in its entirety for the reasons given above and remit the matter to the First-tier Tribunal for a *de novo* hearing with no findings preserved.

DECISION

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Sullivan.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
2021
Upper Tribunal Judge Kebede

Dated: 26 August