



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-003765**  
**PA/51632/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 11 March 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**EG**  
**(anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Fisher, Counsel instructed by Shawstone Associates  
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 6 March 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**No-one shall publish or reveal any information likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant claims to be a national of Eritrea born in 1992 who seeks protection in the United Kingdom.
2. In this judgment I re-make the decision in his appeal, originally dismissed by the First-tier Tribunal (Judge Hanbury) on the 6<sup>th</sup> July 2023, a decision set aside by

myself and Deputy Upper Tribunal Judge Symes following a hearing on the 23<sup>rd</sup> October 2023.

## **Background**

3. The Appellant arrived in the UK on the 22<sup>nd</sup> January 2015 and claimed asylum. He said that he was born in Ethiopia and lived there until he was 7 years old, after which he was deported to Eritrea with his father. His father was almost immediately drafted into the army, leaving the Appellant in the care of an uncle in Assab. In October 2004, when the Appellant was about 12, he was taken back to Ethiopia with his two older cousins: they were leaving because they had received their call-up papers. He ended up staying in Ethiopia with an aunt for about 9 years. He went to school there. Then in 2013 his aunt and her husband decided to emigrate to America. The Appellant left Ethiopia for Sudan, and travelled from there to Libya, and on to Europe. The Appellant asserts that as a Tigrayan of Eritrean nationality he is not entitled to Ethiopian nationality. He has a well-founded fear of returning to Eritrea because he faces there persecution for reasons of his political opinion, imputed to him because he does not want to undertake military service.
4. The Respondent refused the claim in a letter dated the 9<sup>th</sup> June 2016. No issue was taken with the detailed evidence that the Appellant had given about Eritrea in response to the many questions put to him at interview. The Respondent did however note that the Appellant only spoke a little Tigrinya, the national language of Eritrea [14-15] and then said this:
  16. In addition it is noted that you returned to Ethiopia in 2004 and lived there for some 9 years without any problems (AIR 138), therefore in total you lived in Ethiopia for some 16 years. During your asylum interview it was brought to your attention that under Ethiopian nationality law a person can apply for Ethiopian status if they have reached the age of majority, have lived in the country for at least 4 years, able to communicate in one of the national languages, in your case Amharic, has a source of income, is of good character and has no criminal convictions and with this in mind could you not return to Ethiopia to avoid any claimed threats in Eritrea...
  18. Given that you lived in Ethiopia for a total of some 16 years it is considered unlikely that you would not have taken the opportunity to regularise your stay there by applying under the Ethiopian nationality laws. Furthermore your reluctance to approach the Ethiopian embassy to confirm that you have no status there casts doubt on your credibility and your claim to be a national of Eritrea" (*sic*)
5. The Appellant appealed against that decision. In a decision dated the 4<sup>th</sup> April 2016 the First-tier Tribunal (Judge Clough) dismissed the appeal. Whilst Judge Clough noted the evidence that the Appellant had been able to give about life in Eritrea he found that the Appellant had not discharged the burden of proof in respect of his nationality:

“24. The deciding factor in my view of the Appellant’s claim is the fact he was able to live in Addis Ababa with his aunt and attend school for nine years. That he was able to do so until the end of 2013 does not support the Appellant’s claim he is an Eritrean national or would be perceived as such by the Ethiopian authorities”

6. On the 22th April 2019 the Appellant filed further submissions with the Home Office. He asserted that he had new material capable of creating a realistic prospect of success. This material included:
- i) A ‘Refugee ID card’ issued by the State of Eritrea Commission for Refugee Affairs. This states that the Appellant was deported with his father by the ‘Wayane (TPLF) regime’ via Assab. This is referred to in the evidence as a ‘repatriation card’;
  - ii) An expert report from Mr Omer Ahmed *inter alia* confirming that the repatriation card appears to be genuine;
  - iii) A letter from elders of the Eritrean Community in Lambeth who state that having questioned the Appellant, they believe him to be Eritrean as claimed. They questioned him about specific cultural aspects of Eritrean life, and conducted verification checks in the diaspora and Assab and were satisfied that the Appellant and his family are from Assab;
  - iv) A letter from the Appellant’s uncle confirming the Appellant’s evidence, plus translation;
  - v) A statement from the Appellant and his friend Mr Yohannes Bere Hagos, who state that they went together to the Ethiopian embassy to try and secure the Appellant documentation showing him to be Ethiopian;
  - vi) Photographs of the Appellant and Mr Hagos at the Ethiopian embassy.
7. The Respondent accepted that these documents did create a realistic prospect of success, but refused the claim nevertheless. She maintained her view that the Appellant needs to prove that he is not Ethiopian.

### **The First-tier Tribunal Decision**

8. When the matter came before Judge Hanbury in June 2023 it was agreed between the parties that the principal matter in issue was the Appellant’s nationality. If the Appellant was Ethiopian he failed, since he has not demonstrated, or indeed asserted, a fear of return to that country. If the Appellant is Eritrean, he succeeds, on the basis that he would face a real risk of persecution if indeed he had dodged the draft.
9. Judge Hanbury directed himself to the decision of Judge Clough, and properly recognised that this was his *Devaseelan* starting point<sup>1</sup>. He then addressed the material submitted with the ‘fresh claim’.

---

<sup>1</sup> Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* [2002] UKIAT 00702

10. As to the repatriation card the Tribunal says this:

33. The striking thing about the repatriation card is that it is dated 1999. It is not credible that such an important document, which significantly pre-dates Judge Clough's decision, would conveniently be sent to the appellant as recently as 2019 or 2020. This is, presumably, the date he claims to have received it (see page 23 of the pdf bundle numbered page 3, where the appellant refers to receiving the document from his uncle but without saying when or where he received it). The postmark on the envelope (at page 78) is illegible. A curious feature of the repatriation card is that it describes the appellant's "mother's language" as "Tigrinya" - a language that the appellant claims to have limited knowledge of. It seems unlikely that the appellant's uncle would have sufficient knowledge of the Tigrinya language to identify the importance of the document concerned and no satisfactory explanation for the discrepancy in languages has been given.

11. The Tribunal attaches no weight to the expertise of Mr Ahmed on the basis that it is unclear what qualifications he might have to authenticate documents. The letter from the Eritrean Community in Lambeth is discounted on the basis that all of the information "must have come from the Appellant himself". The decision goes on to refer to a statement of truth in that letter as follows:

"The author of the document does not express any special expertise other than the fact he claims to be Eritrean himself. I have no idea what the "legal duty not to embellish people's stories and give them a support letter" is supposed to mean but, in absence of a hearing any oral evidence from Mr Ghebreyohannes, I would be inclined to reject this evidence in its entirety as a matter that I could attach any weight to"

12. The decision then concludes:

37. The fact that the appellant made a half-hearted attempt to obtain Ethiopian nationality or residence by making an application to the embassy is not disputed by the respondent. It is disputed that the appellant produced sufficient evidence to support his claim. It was Judge Clough's conclusion that he could have done so nothing I have seen the evidence presented before me suggests a different conclusion.

38. Having carefully considered the four pieces of new evidence referred to above that are said to give rise to a different conclusion than that reached by Judge Clough, none of those additional pieces of evidence lead me to that different conclusion.

39. The appellant did not give a credible account, for the reasons given by Judge Clough. Having considered the new evidence I still find his account incredible and I find that he is not a genuine refugee.

### Error of Law: Discussion and Findings

13. Having heard the submissions of the parties on the 23<sup>rd</sup> October 2023, Judge Symes and I were satisfied that the decision of Judge Hanbury must be set aside. Our reasons are as follows.
14. Before we turn to the individual grounds, we would observe that there is an overarching problem with the decision which permeates all that follows. That is that it reads as if Judge Hanbury *started* from the position that the Appellant was not a credible witness. It appears that he did so because he was under the impression that this had been the conclusion of Judge Clough: [Hanbury §39]. Had that been the case, applying the guidance in Devaseelan, that starting point would have been perfectly legitimate.
15. Judge Clough, however, said no such thing. Judge Clough confined himself to saying that the length of the Appellant's residence in Ethiopia does not suggest that he is not entitled to nationality of that country [see the extract at our §5 above]. The only 'credibility' point taken by Judge Clough was that the Appellant has only limited knowledge of Tigrinya, the main language of Eritrea. That was, with respect, a point which took nobody anywhere, since it is accepted that the Appellant *did* in fact spend a period of his childhood in that country: see for instance the HOPO's submissions before Judge Hanbury recorded at his decision at §24. That concession of fact was no doubt given because the Appellant had been able to provide a considerable amount of credible evidence about his life in Assab, a town where most of the population continue to use Amharic, rather than Tigrinya. We are therefore concerned that the First-tier Tribunal got off on the wrong foot. This was not a case where credibility was a significant issue: the only question was whether the long periods that the Appellant had, by his own admission, spent in Ethiopia could form the basis of some entitlement to Ethiopian nationality.
16. With that in mind we reached the following conclusions about the grounds.
17. Ground 1 is that the Tribunal's conclusions on the repatriation card are irrational. We consider this in the round with ground 2, which is concerned with the Judge's approach to the expert report of Mr Ahmed.
18. The Judge gives a series of reasons for concluding that the card is "not genuine", and rejects Mr Ahmed's evidence that it is, on the grounds that he is not qualified to offer such an opinion, and that he veers into "advocacy" on the Appellant's behalf. Counsel for the Appellant points out that in the refusal letter dated the 10<sup>th</sup> September 2020 the Respondent expressly accepted that Mr Ahmed was an expert. Mr Ahmed had set out in the body of his report why he considered himself qualified to comment on the card and the Judge does not appear to have engaged with that evidence. The Respondent defended the decision on the basis that the Judge is not obliged to accept expert opinion and it was for him to undertake a rounded *Tanveer Ahmed* assessment of the evidence. She submitted that "given the negative credibility findings" the Judge was entitled to reject the authenticity of the card.
19. As we have set out above, it was a misconception on the part of the judge, and to some degree the person who authored the September 2020 refusal letter, that there were "negative credibility" findings in this case up to that point. Both the

author of the letter and Judge Hanbury have read into Judge Clough's decision findings that simply were not there. The only possible issue arising from the narrative was the Appellant's claim to have been deported to Eritrea and to have lived there for some years. At the hearing before Judge Hanbury the Respondent expressly accepted the latter: "in terms of background it was accepted that the appellant was *in* Eritrea but not that he was a *national* of the country" [at §24]. Nowhere in its analysis of the repatriation card does the Tribunal recognise that important matter.

20. What reasons does the Tribunal instead give? It comments that the card itself is dated 1999 and therefore pre-dates Judge Clough's decision. That much is correct, and consistent with the Appellant's narrative. It then observes that the postmark on the envelope is illegible. This too is correct, but not inconsistent with the Appellant's case that he was only latterly able to obtain the card with the intervention of a friend and his family (itself a matter attested to in a separate witness statement by said friend). In any event the Tribunal does not draw any conclusions from its own observations. Moving on, the decision describes as "curious" the information on the card that the Appellant's "mother's language" was Tigrinya. We are unsure why that might be curious given that the Appellant was a small child when the document was issued, and the primary holder was his father. We do not perceive it to have ever been in issue that his parents were indeed of Tigrinyan ethnicity. The Tribunal then says this:

It seems unlikely that the appellant's uncle would have sufficient knowledge of the Tigrinya language to identify the importance of the document concerned and no satisfactory explanation for the discrepancy in languages has been given.

21. We genuinely have no idea what this might mean. As we understand it, the uncle to whom the decision refers is the uncle who provided the document through the intervention of the family friend. Counsel thought the Tribunal to be querying how this Ethiopian refugee in Eritrea might have sufficient Tigrinya language skills to be able to read the card. If that was what the judge meant, we are satisfied that there was no evidential foundation for this reasoning. There was no evidence about what languages the uncle might have spoken, but moreover any refugee living anywhere in the world knows what their residence card looks like. Only then does the Tribunal turn to address the evidence of Mr Ahmed, who of course considered the card to be genuine:

"35. I do not see how the expert can conclude that the document provided was genuine with any degree of likelihood. Dr Omer Ahmed appears to have limited professional qualifications to authenticate documents such as those provided to him by the appellant's solicitors, acknowledging himself the limited resources available to him to carry out his task. Rather than a genuine expert possessing an expertise not possessed by the layman, the present expert possess qualifications largely limited to the fact that he appears to be deeply involved in issues connected with Eritrea".

22. With respect, we do not accept that this is a fair assessment of Mr Ahmed's stated - and accepted - expertise. Mr Ahmed is a lawyer and researcher whose previous roles included senior legal strategy officer at the Equality and Human Rights Commission. He now operates under a consultancy called Africa Legal

Control Risks Ltd offering advice and reports to private companies as well as the UK government, the UN, the Kenyan government and aid agencies. He writes “I am frequently instructed by diplomatic missions in Africa and law firms internationally, to undertake due diligence reviews for companies and governments, which includes inter alia advising on authentication of documents, country of origin information and nationality”. As regards the authentication of documents, he explains that his methodology includes careful scrutiny of the document, reviewing its structure and composition before comparing it to similar documents issued by the jurisdiction and using consular, diplomatic and civil society contacts to assist in the verification process. Here this process leads Mr Ahmed to the following conclusions:

“The above listed documents (an Eritrean Repatriation Card), appear to be authentic, and are in many respects consistent with those prepared by Eritrean officials and legally trained professionals in Eritrea. The type of documents drafted, the wording, and terminology utilised, and the structure of composition of the documents presented, lead me to conclude that documents presented are consistent with the type of documents typically issued by public authorities and public notaries to record important public affairs in the Republic of Eritrea, and in particular the Eritrea Commission on Refugee Affairs which issues Repatriation Cards”.

23. We are satisfied that it was improper for this evidence to be rejected in the way that it was. The Respondent’s refusal letter expressly accepted Mr Ahmed’s expertise, and we are unable to think of another way in which he might better have sought to evaluate the repatriation card. Having examined that document he concluded that there was nothing on the face of that document to raise any questions (a conclusion with which we agree). As someone whose day to day business involves the authentication of documents from East Africa he was then well placed to look at the wording, the terminology, structure and composition to see if it appeared consistent with other documents he had seen from that jurisdiction: it did.
24. It follows that we need not address the remaining grounds in any detail since the errors in approach to the repatriation card were central to this appeal. We would add that in our view the Tribunal’s rather intemperate dismissal of the letter from the Eritrean elders in London was not justified and did not appear to be based on a proper reading of that document. It was simply not correct to say that their assessment had been based solely on what the Appellant had told them. We also note that the Judge appears to have drawn adverse inference from the Appellant’s insistence that a letter from his uncle was handwritten in Amharic when the translation certificate states it to have been Tigrinya: a further letter from the translation company confirms that the document is indeed in Amharic and apologies for the error. This was not of course an error on the part of Judge Hanbury, but as a matter of fairness we admitted the correction without objection from the Respondent.
25. It was for those reasons that the decision of Judge Hanbury was set aside. In making that order we also made the following observations and directions:

“There is in our view no need for any further oral evidence in this appeal. The Appellant has twice been cross examined, and no

material discrepancy arises in the evidence that he has given to either Judge of the First-tier Tribunal. The Appellant does not deny that he was born in, and lived for some time, in Ethiopia. The Respondent accepts that the Appellant did live for a period in Assab. Absent any new challenge (which would have to be supported by evidence) we do not find there to be any good reason to reject the authenticity of the repatriation card. Its existence is consistent with what we know, which is that many former nationals of Ethiopia were deported to Eritrea in the years following the referendum, and that the Appellant did in fact live there at some point.

That being the case, we have identified the following matters as the only material issues in this appeal:

- i) Would the facts as set out by the Appellant (birth, residence, schooling) ordinarily entitle him to Ethiopian nationality under Ethiopian law?
- ii) Would the fact that he was deported to Eritrea as a child make a difference to such an entitlement?
- iii) Subject to the answers to (i) and (ii) above, has the Appellant made a *bona fide* application to try and obtain recognition of a right to citizenship at the Ethiopian embassy – was there anything more that he could reasonably have done?
- iv) Taking the answers to (i)-(iii) into account with all of the available evidence, has the Appellant discharged the burden of proof and shown that on a balance of probabilities he is an Eritrean national?"

### **The Decision Re-Made**

26. The Appellant's representatives have now obtained a further expert report in order to answer some of the questions identified by myself and Judge Symes.
27. Dr Bronwen Manby is an independent consultant and senior visiting fellow at the London School of Economics and Political Science. Qualified as a solicitor, she has more than 25 years' professional experience related to human rights and democracy in Africa, and has latterly specialised in citizenship issues on the continent. She has written three books on citizenship and authored numerous reports on behalf of UNHCR and others. In preparing her report on the Appellant Dr Manby has drawn in particular on her report for UNHCR on statelessness in the Horn of Africa<sup>2</sup>. I am satisfied that Dr Manby is an expert, and I accept her assertion that she is familiar with, and has applied, the proper approach to be taken to giving expert evidence in this Tribunal.
28. In reading Dr Manby's report I remind myself of the case for the Home Office:

“under Ethiopian nationality law a person can apply for Ethiopian status if they have reached the age of majority, have lived in the

---

<sup>2</sup> Available at <https://www.refworld.org/docid/61c97bea4.html>



country for at least 4 years, able to communicate in one of the national languages, in your case Amharic, has a source of income, is of good character and has no criminal convictions”

29. Dr Manby confirms that the 2003 Proclamation on Ethiopian Nationality provides that naturalisation is possible by an adult based on an ‘established domicile’ in Ethiopia and four years’ residence preceding the submission of the application, conditional on the following additional requirements (section 5 of the proclamation):
- ability to communicate in any of the languages of nations/nationalities in the country
  - sufficient and lawful sources of income
  - good character
  - no record of criminal convictions
  - proof of release from a previous nationality or of statelessness
  - oath of allegiance
30. She further confirms that Section 3 of the Proclamation 378/2003 on Ethiopian Nationality provides: ‘Any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian’. In her view the Appellant was almost certainly born with Ethiopian nationality
31. What the Home Office have however overlooked is the prohibition on dual nationality, preserved from the 1930 Nationality Law. The effect of this is that a person acquiring or retaining another nationality is regarded as voluntarily relinquishing Ethiopian nationality. On the facts presented - in particular the repatriation card - it is likely that the Appellant was so regarded when he was deported to Eritrea, and at that point deemed to be a Eritrean national, or more accurately, when all of this happened to his *father*. In order to reverse the consequences of his parents’ deportation to Eritrea the Appellant would have to prove that it was a decision made in error: not something that he could today, some 30 years later, realistically be expected to achieve.
32. In relation to the application to the Ethiopian embassy, Dr Manby notes that there does not appear to be any evidence on the basis of which the Ethiopian authorities might accept that the Appellant is in fact Ethiopian. In order to do this he would need to produce evidence that one or both of his parents were Ethiopian; the only identity document in evidence in this case is an Eritrean refugee ID document, indicating that the family were expelled from Ethiopia as Eritreans and recognised by Eritrea as such. Dr Manby states that school records in Ethiopia are not relevant for determination of Ethiopian nationality, since nationality is based solely on descent (with the exception of a presumption in favour of foundlings). As to the statement in the Home Office refusal letter that he would have undertaken the process to naturalise in Ethiopia before he left in 2013, on the basis of his residence in the country for a total of around 16 years, and his knowledge of Amharic, Dr Manby describes this as “so speculative as to be fantasy”. In order to naturalise, he would have had to demonstrate an ‘established domicile’ for four years as an adult immediately preceding the application, and fulfil a range of other conditions (see above) - all of which would have depended on showing legal residence in Ethiopia, which, as a person formerly deported as an Eritrean, he could not do.

33. In summary Dr Manby concludes that it is likely to be rare that anyone naturalises as Ethiopian, and that this would be especially unlikely if the person is of Eritrean descent. She writes: "I would have been astonished if he had thought to make such an application and even more astonished if it had been granted". On the evidence presented she considers that the Appellant is very likely to have Eritrean nationality on the basis that both his parents were of Eritrean origin and of Tigrinya ethnicity. He would not be admissible to Ethiopia if his nationality could not be established. Even if he were able to obtain a travel document from the embassy, which would be required for him to be admitted to Ethiopia, it seems very unlikely that he would be able to secure the identity documents needed to be able to integrate into Ethiopian society, since he has nobody there who can vouch for his identity. Given the recent civil war in Tigray province, people of Tigrinya ethnicity face significant difficulties in getting identity documents - even if it were, for the sake of argument, asserted that his parents were from Tigray province rather than Eritrea. The upshot of Dr Manby's evidence is that on the balance of probabilities, the Appellant is Eritrean and as a result, is not eligible for Ethiopian nationality.
34. Mr Tufan very realistically accepted that he did not have any evidence to counter what Dr Manby had concluded. He took no issue with her expertise. That being the case, I am grateful to Dr Manby for her very balanced, detailed and considered report, which allows me to conclude on the balance of probabilities that the Appellant is in fact a national of Eritrea, and that his appeal must accordingly be allowed.

### **Decisions**

35. The decision of the First-tier Tribunal is set aside.
36. The decision in the appeal is remade as follows: the appeal is allowed on protection grounds.
37. There is an order for anonymity.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
6<sup>th</sup> March 2024