



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

Appeal Number: AA/10062/2013

THE IMMIGRATION ACTS

Heard at Newport

**Determination
Promulgated**

On 15 May 2014

Determination delivered orally

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Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**A T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Duncan instructed by Blavo & Co Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REMITTAL

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14

of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. The appellant claims to be a citizen of Eritrea who was born on 19 March 1990. He arrived in the United Kingdom on 26 September 2013 and made an application for asylum. On 18 October 2013, the Secretary of State refused his application for asylum and made a decision to remove him to Eritrea or Ethiopia. The appellant appealed to the First-tier Tribunal and in a determination promulgated on 22 January 2014 Judge Powell dismissed the appellant's appeal.
3. The appellant sought permission to appeal to the Upper Tribunal and on 12 February 2014 the First-tier Tribunal (Judge Levin) granted the appellant permission to appeal on the ground set out in paragraph 4 of his reasons for granting permission:

“At para 31 of his determination the Judge found that the appellant was an Eritrean from Ethiopia. At para 42 he found that the appellant was an Ethiopian with an Eritrean background and at para 44 he found that the appellant would be at risk of persecution in Eritrea and that he cannot be removed thereto. Given the Judge's finding that the appellant is at risk of persecution in Eritrea there is an arguable error of law in his dismissal of the appeal.”
4. In her rule 24 response, the Secretary of State opposed the appellant's appeal and submitted that the Judge's decision was not irrational and in particular:

“He was entitled to conclude that the appellant was an Eritrean who was living in Ethiopia and that he had failed to demonstrate that he could not obtain Ethiopian citizenship.”
5. Mr Richards, who represented the Secretary of State accepted that the Judge had made no clear finding on the appellant's nationality. That is clearly correct. At paragraph 31 the Judge found that “the appellant is an Eritrean from Ethiopia”. At paragraph 42 the Judge found that “the appellant is an Ethiopian with an Eritrean background”.
6. Mr Duncan, who represented the appellant sought to argue on the basis of the rule 24 reply that the Secretary of State had in fact conceded the appeal because she had accepted that the appellant was an Eritrean and it was conceded by the Presenting Officer before the Judge that if the appellant was an Eritrean his appeal must succeed.
7. As I pointed out to Mr Duncan at the hearing the difficulty with that submission is that it does not deal with the obvious inconsistency in paras 31 and 42 of the Judge's determination which, it is argued before me, contains not just a lack of clarity but two inconsistent

findings. The Respondent's rule 24 reply simply cannot be understood to concede the appeal.

8. The appellant's nationality was central to his claim for asylum together with the factual background which he claimed put him at risk because of his involvement with the OLF which the Judge did not accept in his determination. It seems to me that, as Mr Richards accepts, the inconsistent finding on nationality fatally flaws the Judge's approach to the appellant's asylum claim and risk on return to Ethiopia or Eritrea, for that reason alone the decision cannot stand and should be set aside.
9. None of the Judge's findings should stand and the rehearing should be *de novo*. The issue of the appellant's credibility and other matters raised on his behalf are matters which should be considered afresh by a Judge.

Decision and Remittal

10. For these reasons, therefore, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and I set it aside.
11. As there are no factual findings in relation to the appellant's appeal the proper disposal is that the appeal be remitted to the First-tier Tribunal to be heard *de novo* by a Judge other than Judge Powell. None of the factual findings shall stand.

Signed

A Grubb
Judge of the Upper Tribunal

Date: