



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

Appeal Number: IA/04219/2012

THE IMMIGRATION ACTS

**Heard at Glasgow
on 5 November 2014**

**Decision and Reasons
Promulgated
On 7 November 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

EYASU AESKELE MULUGETA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D McGlashan, of McGlashan MacKay, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Dennis, dismissing his appeal against the respondent's refusal on 23 February 2012 to revoke a deportation order made on 16 April 2007. This arose from the appellant's conviction on 9 January 2006 of an offence of seeking refugee leave by deception, for which he was sentenced to 12 months imprisonment. His refugee claim, based on alleged events in Ethiopia around 2004 - 2005, was subject to a negative determination on 27 September 2006.
2. On 10 May 2013 the Criminal Cases Review Commission for England, Wales and Northern Ireland decided to refer the appellant's conviction to the Court of Appeal, on the view that the appellant had been deprived of legal advice which

might quite probably have succeeded, giving rise to a real possibility of the conviction being found unsafe. There was a long series of adjournments in the First-tier Tribunal. The records are not entirely clear, but the underlying reason seems to have been uncertainty over the conviction.

3. In his determination the judge said at paragraph 19 that it was not for him to supplant the role of the Court. However, it would be difficult to construe the rest of that paragraph as anything but a finding on whether the conviction was likely to stand.
4. The appellant failed again on his claim relating to risk on return. His proposed grounds attacking those findings were thought to be totally without merit and did not attract a grant of permission from either the First-tier Tribunal or the Upper Tribunal. Permission was granted on the one issue dealt with herein.
5. Proceedings in the Upper Tribunal have also been delayed, due to lack of information from either party about when the Court was likely to hear the case. The outcome might determine whether any error is material. Mr McGlashan has heard recently from the barrister instructed in the case that it had been thought it might be listed in June, but no date was now likely to be fixed until at least December (presumably of 2014).
6. The time has come in the Upper Tribunal as it did in the First-tier Tribunal to make a decision as matters stand.
7. The respondent's decision of the respondent of 23 February 2012 has not been faulted, *as at that date*. The First-tier Tribunal correctly took account of matters arising thereafter - 2002 Act, s. 85(5). It was an error of law for the First-tier Tribunal, contrary to its self-direction, to pre-empt the outcome in the Court. As that outcome is still awaited, the error is material.
8. It would be wrong to uphold a refusal to revoke a deportation order when it cannot safely be said that the conviction on which it was based is to stand. If a party had only asked the Commission for a review, that would be of little significance. The position is quite different where the Commission has made a reasoned reference to the Court.
9. The determination of the First-tier Tribunal is **set aside**, not in so far as the asylum or human rights grounds were dismissed, but because the decision under appeal was (retrospectively, and as matters stand today) **not in accordance with the law**. On that basis the appeal, as originally brought to the First-tier Tribunal, is **allowed**.
10. No anonymity direction has been requested or made.



5 November 2014
Upper Tribunal Judge Macleman

