



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

Appeal Number: AA/08681/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2015**

**Determination Promulgated
On 22 January 2015**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

**MR NATI ALAMNEW
(No Anonymity Direction Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Easty of counsel instructed by Kesar & Co

For the Respondent: Mr T Wilding a Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant may be a citizen of Eritrea born on 21 June 1995. The question of his nationality is the main issue in this appeal. He has been given permission to appeal the determination of First-Tier Tribunal Judge Mrs RJNB Morris ("the FTTJ") who dismissed his appeal against the respondent's decision of 13 August 2013 to give directions for his removal from the UK following the refusal of asylum.

2. The appellant claimed that he left Eritrea with his parents when he was six months old and stayed with them in Ethiopia for five years. They were deported back to Eritrea in 2000 and lived there until 2005. The appellant and his mother then left Eritrea illegally and went to live in Sudan. They were in Sudan from 2005 until 2008. They then flew to Turkey, stayed in Istanbul for one week and then moved on to Greece. They remained in Greece for five years until they were threatened with deportation. The appellant left his mother in Greece and flew to France with the assistance of an agent. He remained in France for less than the day before travelling to the UK illegally hidden in a lorry. He arrived here on 27 December 2012 and claimed asylum the same day.
3. The appellant claimed to fear persecution from the authorities in Eritrea because he was a Pentecostal Christian. His father had been arrested and it was not known what had happened to him although it was feared that he had been killed. He also feared persecution by the authorities in Eritrea because he left the country illegally and had not yet undertaken his military service.
4. The respondent did not believe the appellant's account of events. It was not believed that he was a Pentecostal Christian, that he had left Eritrea illegally or that he had ever been of any adverse interest to the authorities there. The respondent had doubts as to whether the appellant was a citizen of Eritrea. I will need to return to the questions of how these doubts were expressed, whether the respondent's conclusion in the reasons for refusal letter put the question of nationality in issue, amounted to a concession that he was Eritrean (and if so to what extent and for what purpose) or whether it was unclear.
5. The appellant appealed and the FTTJ heard his appeal on 15 October 2013. Both parties were represented and the appellant gave evidence. The FTTJ made detailed findings of fact which are set out in paragraphs 21 to 35 of the determination. She concluded that the appellant was not a credible witness. His account of events was not believed. His story had been constructed so as to meet the criteria which would enable him to show that he was at real risk if he was to return to Eritrea. He was not from Eritrea. His Article 8 human rights grounds were considered but rejected. The FTTJ dismissed the appeal on asylum, humanitarian protection and human rights grounds.
6. The appellant applied for permission to appeal to the Upper Tribunal and the application was refused by a judge in the First-Tier Tribunal. On renewal to the Upper Tribunal the application was granted on the basis that, whilst the challenge to the adverse credibility findings might be little more than a disagreement there was arguable merit in the grounds relating to the FTTJ's approach to nationality and country of return. It was accepted that all the grounds could be argued.

7. There are two sets of grounds of appeal, to the First-Tier Tribunal and to the Upper Tribunal. Both are relied on. The second set of grounds also address the reasons given for the first refusal of permission to appeal. The grounds submit that the FTTJ erred in law. Firstly, the FTTJ failed to recognise and deal with the fact that the respondent had accepted that the appellant's nationality was Eritrean and that his representatives had properly prepared his case on this basis. The FTTJ should not have gone behind this concession. The appellant had been denied a fair opportunity to secure evidence to help him establish his Eritrean nationality. Secondly, if it was found that the respondent had not made this concession the refusal letter was legally flawed for lack of clarity. Thirdly, the credibility assessment was flawed because there was no evidential basis for findings as to the appellant's evidence as to when Easter fell and why the authorities in Eritrea did not persecute the appellant or his mother after they had arrested his father. There were no inconsistencies. Fourthly, in relation to the appellant's claim to be a Pentecostal Christian the FTTJ had inverted the standard of proof. Fifthly, the FTTJ failed to have proper regard to the contents of the Multi-Assessment report prepared by the London Borough of Hounslow.
8. There is a Rule 24 response from the respondent which seeks to clarify the respondent's position and submits that there is no material error of law.
9. Ms Easty relied on both sets of grounds. The appellant's representatives had prepared his case on the basis that nationality was not disputed. This was made clear in the skeleton argument before the FTTJ. She took me to paragraphs 13 and 16 of the reasons for refusal letter. Neither the respondent's Presenting Officer nor the FTTJ recognised that the respondent had accepted that the appellant was a citizen of Eritrea. The respondent now said that there had been no concession but the appellant and his representatives were entitled to interpret the reasons for refusal letter on the basis that there was. If the appellant and his representatives had known that nationality was in dispute they would have sought evidence to prove it which was likely to have been in the form of language analysis, an expert report as to his knowledge of Eritrea, attempts to contact people in his home area in Eritrea who would have known him and trying to find any relevant documents which shed any light on his nationality. In reply to my question as to why this had not been done either prior to the respondent's decision or after the determination of the FTTJ, Ms Easty submitted that prior to the respondent's decision the appellant did not know whether his nationality was going to be disputed and, after the determination had been received, he was not likely to get funding to make these enquiries until the question of any error of law had been decided.
10. In reply to my question as to whether the FTTJ's decision would bind the respondent so that she could not return him to Eritrea which was, in part, what he was seeking, Ms Easty submitted that if the Secretary of State made a new decision to return the appellant to another country, probably

Ethiopia, this would create a fresh right of appeal. However, if she did not or if there was delay this would leave the appellant in limbo unable to work and probably without support.

11. Ms Easty relied on the other grounds of appeal without further submissions.
12. Mr Wilding submitted that the Asylum Policy Instructions indicated that there were disputed nationality cases and doubtful nationality cases. What the respondent said in the reasons for refusal letter indicated that this was a doubtful nationality case. He accepted that the words “for the purposes of this document” in paragraph 16 defined both the respondent’s position in relation to the appellant’s claim and the basis on which the appeal had to be considered by the FTTJ. He argued that the words “will be recorded as Eritrean” were not the same as “is Eritrean” but conceded that the word “doubtful” did not appear anywhere. The respondent’s position was that read as a whole paragraphs 13 to 16 of the refusal letter amounted to a clear indication that the appellant’s claimed Eritrean nationality was considered to be doubtful.
13. Mr Wilding accepted that paragraph 3a of the appellant’s skeleton argument before the FTTJ appeared to indicate that he considered that the respondent had accepted his Eritrean nationality. He submitted that the appellant had addressed matters relating to his nationality in paragraphs 8 to 12 of his witness statement dated 15 October 2013 and that this and the skeleton argument dealt with his position on the question of nationality. In the light of the Asylum Policy Instructions the respondent took the correct position. She did not say that nationality was disputed because she had no evidence of another nationality. There were three options open to her; to accept his nationality, to say that it was doubtful or to say that it was disputed.
14. Mr Wilding submitted that there was no error of law in relation to the FTTJ’s treatment of the nationality question. Whether or not the appellant would be left in limbo as a result of the decision was not a matter for the Tribunal but for a future decision.
15. In relation to the other grounds Mr Wilding submitted that the determination was well structured and well-reasoned. The FTTJ gave a number of reasons for the adverse credibility finding and the grounds of appeal were in substance no more than disagreement with conclusions properly reached on the evidence. Overall there was no error of law and I was asked to dismiss the appeal.
16. In her reply Ms Easty submitted that even if paragraph 16 of the refusal letter did not amount to a clear acceptance that the appellant was Eritrean then it was unclear. The appellant and his representatives were entitled to interpret and treat it as a concession that he was Eritrean. The FTT should have spotted the point and sought clarification. The matters addressed in

the skeleton argument and the appellant's witness statement went to credibility generally.

17. Ms Easty asked me to find that there were material errors of law, to set aside the decision and to direct that it be reheard in the First-Tier Tribunal with no findings of credibility or fact preserved. Mr Wilding agreed, save that he asked me to consider whether the findings of credibility and fact could be preserved, other than the finding in relation to the appellant's nationality.
18. I reserved my determination.
19. The appellant claimed to be a citizen of Eritrea. The respondent's position in relation to his nationality and identity is set out in paragraphs 13 to 16 of the reasons for refusal letter dated 12 August 2013. Paragraphs 13 to 15 set out the respondent's detailed assessment of aspects of the appellant's evidence relating to his nationality and the question of whether he had lived in Eritrea. All of this leads to the conclusion in paragraph 16; "However, given the absence of any documentary evidence which would give reasonable grounds to formally dispute your nationality, it has been considered that for the purposes of this document your nationality will be recorded as Eritrean".
20. Mr Wilding said, and I accept, that under the Asylum Policy Instructions the respondent had three alternatives. These were to accept the claimant's nationality, to treat it as "doubtful" or to treat it as "disputed". Neither the word "doubtful" nor the word "disputed" appears in the refusal letter. The words "However, given the absence of any documentary evidence which would give reasonable grounds to formally dispute your nationality" give support to the view that the respondent was not treating the nationality claim as "disputed" leaving "doubtful" as one of the two possible alternative conclusions. Set against this I find that the final words "it has been considered that for the purposes of this document your nationality will be recorded as Eritrean" begs the question of what the respondent's final conclusion and position was. I find, as Mr Wilding accepts, that "for the purposes of this document" means that this was the respondent's position both for the refusal of the appellant's application and in any resulting appeal to the Tribunal. "Will be recorded as Eritrean" does not go as far as and is not as clear as "is Eritrean" but begs the question of what it does mean. I find that the meaning is not clear but comes close to acceptance that the appellant "is Eritrean". I also find that it would be reasonable for the appellant and those representing him to interpret this as acceptance on the part of the respondent that, at least for the purposes of the refusal and the subsequent appeal, he was Eritrean. The fact that that is what the appellant's representatives did is borne out by the skeleton argument before the FTTJ in which, at paragraph 3, they set out what the appellant believed the respondent had accepted. This states; "3. Respondent accepts: a. that the appellant's nationality and identity (he is

accepted to be a national of Eritrean (sic) born on 21st of June 1995 (RFRL 2013), para 16.....”

21. I find that is said in the skeleton and in the appellant’s witness statement, whilst addressing points taken in the refusal letter, does not indicate that the appellant was approaching the appeal on any basis other than that nationality was conceded.
22. The FTTJ said, in paragraph 1; “his nationality is in issue between the appellant and the respondent” before going on to say, in the same paragraph, that in the refusal letter “his nationality is recorded as Eritrean”. In paragraph 14 what is said in paragraph 16 of the refusal letter is set out in full. The FTT returned to the question as part of her findings in paragraph 23. The first sentence reads; “the appellant’s nationality and identity have not been accepted by the respondent”. I can find no mention of the appellant’s position as it is set out in the skeleton argument. In the light of this I find that the FTTJ should have been aware that the respondent’s position did amount to conceding nationality or, in the alternative, was unclear and the appellant and his representatives regarded it as a concession and it was reasonable for them to do so. Had this been addressed the FTTJ should have asked the respondent’s representative to clarify the position. If that clarification was that nationality was not conceded and the respondent intended to treat it as doubtful then in the light of the appellant’s position fairness would have dictated that the appellant was entitled to an adjournment in order to be given the opportunity to produce further evidence relating to his nationality. This amounts to a material error of law.
23. I find no merit in the other grounds of appeal. They are in substance no more than disagreements with findings properly reached by the FTTJ on all the evidence. However, my finding in relation to the nationality point means that the findings of credibility and fact cannot be preserved. If the appellant had been given the opportunity to produce further evidence relevant to his nationality then, if accepted, these would inevitably have had a knock-on effect on credibility as a whole.
24. I have not been asked to make an anonymity direction and can see no good reason to do so.
25. I find that error of law is such that the decision must be set aside. No findings of credibility or fact are preserved. The appeal should be reheard in the First-Tier Tribunal, by a Judge other than First-Tier Tribunal Judge Mrs RJNB Morris.

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Signed
Upper Tribunal Judge Moulden

Date 16 January 2015

