



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: AA/11053/2013**

THE IMMIGRATION ACTS

Heard at Field House, London

On 4 December 2014

Determination

Promulgated

On 16 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**DH
(ANONYMITY ORDER CONTINUED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, instructed by Irving & Co solicitors

For the Respondent: Ms L Kenny, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims to be a citizen of Ethiopia and he appealed to the First-tier Tribunal against the decision of the Secretary of State of 20 November 2013 to refuse his application for asylum. The Secretary of State granted the appellant limited leave to remain until 19 May 2016. First-tier Tribunal Judge Malins dismissed the appeal against the refusal of asylum and the appellant now appeals with permission to this Tribunal.

2. The background to this appeal is that the appellant arrived in the UK on 30 September 2001 and claimed asylum. His application was refused but as it was accepted he was a minor he was granted Exceptional leave to remain until 10 November 2004 when he turned 18. Prior to the expiry of that leave to remain he applied for further leave to remain as a refugee. That application was refused on 15 May 2007 and an appeal against that decision was dismissed by First-tier Tribunal Judge Herlihy who found that the appellant's account was not credible, she found that the appellant was a national of Ethiopia and that his parents were both born in Addis Ababa in Ethiopia, although she was satisfied that the appellant's father is of Eritrean origin. The Judge found that the appellant's mother was Ethiopian and rejected his claim that both parents had been born in Eritrea. She found that the appellant was thereby entitled to Ethiopian nationality and that there was no evidence from the Ethiopian Embassy to suggest that he was not entitled to Ethiopian nationality. The Judge found that the appellant's father was detained in 1999 but did not accept the appellant's claim that he was himself mistreated. Judge Herlihy found that the appellant would not face a risk on return to Ethiopia. The appellant obtained permission to appeal to the Upper Tribunal against Judge Herlihy's decision but in a decision promulgated on 24 January 2008, UTJ Chalkley dismissed the appeal on the basis that First-tier Tribunal Judge Herlihy had not made an error of law in her decision.
3. The appellant was not removed from the UK and on 8 April 2011 he made further submissions to the Secretary of State. These resulted in the decision now under appeal.
4. The basis of the further representations was that the appellant has been deprived of his Ethiopian nationality. He claims that, at the request of the Home Office, he attended the Ethiopian Embassy where he was interviewed and subsequently the Embassy refused to issue him with travel documentation.
5. The respondent considered the representations as an application for asylum and refused the application on the basis that the appellant had not shown that he provided to the Ethiopian Embassy the evidence required to prove that he is Ethiopian as set out in the country guidance case of ST (Ethnic Eritrean - nationality - return) Ethiopia CG [2011] UKUT 252 (IAC).
6. The First-tier Tribunal Judge dismissed the appeal against that decision. The Judge took the previous Judge's decision as her starting point and said that the parties proceeded on the basis that the sole issue was the appellant's nationality and therefore the country named in the removal directions [3.1]. The respondent took the position that the appellant was Ethiopian. The appellant's case as put to First-tier Tribunal Judge Malins, was that his parents were both Eritrean and that he was therefore Eritrean and that he had visited the Ethiopian Embassy twice but had never visited the Eritrean Embassy. First-tier

Tribunal Judge Malins found that the appellant was not credible and that he was Ethiopian rather than Eritrean because he has never visited the Eritrean Embassy; he failed to take the required information to the Ethiopian Embassy; and he produced no evidence that he has been refused Ethiopian nationality apart from a Home Office entry onto its computer log which was based in the appellant's own assertion. The Judge found that the appellant had failed to show that he had provided the Ethiopian Embassy with the required documentation; he therefore failed to show that he would be regarded by the Ethiopian authorities as an ethnic Eritrean and that it was therefore unlikely that he would face any problems in Ethiopia.

7. The grounds of appeal to the Upper Tribunal contend that the previous Judge's findings, that the appellant is of mixed ethnicity and would not be considered by the Ethiopian authorities to be Eritrean, are unsustainable in light of the refusal of the Ethiopian Embassy to issue travel documents. Judge Malins said that she took Judge Herlihy's decision into account in accordance with the principles in Devaseelan [2002] UKIAT 00702. The Tribunal issued the following guidance to Judges (then Adjudicators) considering a second appeal. The Tribunal said;

"39. In our view the second Adjudicator should treat such matters in the following way.

- (1) The first Adjudicator's determination should always be the starting-point. It is the authoritative assessment of the Appellant's status at the time it was made. In principle issues such as whether the Appellant was properly represented, or whether he gave evidence, are irrelevant to this.
- (2) Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and on the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent.
- (3) Facts happening before the first Adjudicator's determination but having no relevance to the issues before him can always be taken into account by the second Adjudicator. The first Adjudicator will not have been concerned with such facts, and his determination is not an assessment of them."

8. Judge Herlihy made her decision on 11 July 2007. The appellant's case is that he had an interview at the Ethiopian Embassy in 2008. According to the Home Office record the appellant attended an interview at the Ethiopian Embassy on 29 February 2008. This is clearly an event which occurred after Judge Herlihy's decision. Any finding based on that event may have been capable of leading Judge Malins to a different conclusion from that reached by Judge Herlihy but this event does not in itself make Judge Herlihy's findings unsustainable. The correct approach was that followed by Judge

Malins, which was to take Judge Herlihy's findings as her starting point.

9. The grounds of appeal contend that Judge Malins' finding that the note on the Home Office file that he attended the Ethiopian Embassy is based only the appellant's assertion and therefore insufficient to prove that the appellant cannot be documented is perverse. The note on the Home Office computer system is contained in the appellant's bundle. It appears to be a record of a telephone call to the Ethiopian Embassy about the outcome of the appellant's interview there on 29 August 2008. It states that the emergency travel document application was refused and that both of the appellant's parents are Eritrean. Judge Malins may therefore have misunderstood the source of the information recorded on the Home Office note in that it appears to have come from the Embassy rather than the appellant's own assertion. However this is not a material error as the note says that the appellant claims that both of his parents are Eritrean, a claim which was rejected by Judge Herlihy. It is not therefore clear whether this was the claim made to the Ethiopian authorities. Further, in his statement the appellant said that he went to the Ethiopian Embassy but did not say what he told them about his family origins nor did he say what information or documents he submitted to the Ethiopian Embassy.
10. Mr Fripp submitted that the appellant was supervised or accompanied by a Home Office official on the visit to the Ethiopian Embassy. He submitted that the visit to the Ethiopian Embassy would have been organised by the RGDU of the Home office and that the Judge failed to appreciate the nature of the visit which was therefore under the auspices of the Home Office. Ms Kenny submitted that the Home Office notes do not amount to a concession that the appellant has been unlawfully deprived of his nationality, it is just a record that the appellant was refused an Emergency Travel Document. She produced a copy of a Home Office minute in relation to the appellant's Discretionary leave to remain and submitted that it shows that the appellant was granted leave based on his length of residence and his conduct. It is clear therefore that the grant of leave does not amount to an acceptance that the appellant has been unlawfully deprived of his nationality.
11. Therefore even if Judge Malins did not appreciate that the Home Office obtained the information directly from the Embassy I am satisfied that this is not a material error as it is clear from the determination that the appellant did not provide evidence as to what he told the Embassy officials about his family background or what evidence he produced. The fact that he had not been issued with an Emergency Travel Document by the Ethiopian Embassy was not enough in itself to show that he had been unlawfully deprived of his citizenship.

12. Judge Malins properly referred to the guidance set out in ST as summarised at head note 5 as follows;

“(5) Judicial fact-finders will expect a person asserting arbitrary deprivation of Ethiopian nationality to approach the embassy in London with all documentation emanating from Ethiopia that the person may have, relevant to establishing nationality, including ID card, address, place of birth, identity and place of birth of parents, identity and whereabouts of any relatives in Ethiopia and details of the person's schooling in Ethiopia. Failing production of Ethiopian documentation in respect of such matters, the person should put in writing all relevant details, to be handed to the embassy. Whilst persons are not for this purpose entitled to portray themselves to the embassy as Eritrean, there is no need to suppress details which disclose an Eritrean connection (paragraph 105).”

13. The Judge found that the appellant's attendance at the Embassy with a friend and a letter from the Home Office 'falls woefully short of the above injunction'. This was a finding open to the Judge on the basis of the evidence before her.
14. In summary for the reasons set out above I find that First-tier Tribunal Judge Malins did not err in her determination.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

Signed

Date: 15 January 2015

A Grimes
Deputy Judge of the Upper Tribunal

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date: 15 January 2015

A Grimes
Deputy Judge of the Upper Tribunal