



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/08785/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 8 March 2016**

**Determination  
Promulgated**

**On 26 April 2016**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**RMO  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Susan Harrison of Immigration Advice Services  
For the Respondent: Mr John Kingham, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.
2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds

against a decision taken on 8 May 2015 refusing to grant him further leave to remain and to remove him to Eritrea.

### **Introduction**

3. The appellant is a citizen of Eritrea born in 1989. He claims that he was in military service from 2005 to 2014. He failed to return from leave twice and was eventually arrested in a round up in July 2009. He was imprisoned for twenty months and then sent to two years forced labour in Wadi Shaka. He eventually escaped in 2014 with a colleague when collecting firewood. He exited Eritrea illegally and travelled to Sudan. He arrived in the UK in December 2014 and claimed asylum when detained.

### **The Appeal**

4. The appellant appealed to the First-tier Tribunal and attended an oral hearing at North Shields on 13 November 2015. The judge found that he was not credible and could not assume illegal exit. The judge appreciated that the appellant could be of draft age but was not satisfied that the appellant had proved when he left Eritrea.

### **The Appeal to the Upper Tribunal**

5. The appellant sought permission to appeal on the basis that the judge had not adequately addressed the issue of what basis the appellant did leave Eritrea. The appellant was at risk as a failed asylum seeker in any event.
6. Permission to appeal was granted by First-tier Tribunal Judge Hodgkinson on 15 December 2015 on the basis that it was arguable that the judge did not adequately reason his conclusion that the appellant did not leave illegally and if he did leave illegally then he was at risk of persecution in Eritrea. All grounds were arguable.
7. In a rule 24 response dated 31 December 2015, the respondent sought to uphold the judge's decision on the basis that the grounds represented a mere disagreement. The judge was entitled to find that the claim was not made out and the negative pull of the lie led the judge to discount the illegal exit.
8. Thus, the appeal came before me.

### **Discussion**

9. Ms Harrison submitted that the main thrust of the appeal was that the judge did not identify how the appellant left Eritrea. There were no findings as to how the appellant left Eritrea and that was a material error of law.
10. Mr Kingham submitted in response that there was no requirement for the judge to speculate as to how the appellant left Eritrea. It was not possible to identify whether the appellant left Eritrea before or after 2008.

11. I have considered MO (Illegal Exit – Risk on Return) – Eritrea CG [2011] UKUT 00190 IAC. The Eritrean authorities continue to envisage lawful exit as being possible for those who are above national service age or children of 7 or younger. Otherwise, the potential categories of lawful exit are limited to two narrowly drawn medical categories and those who are either highly trusted government officials or their families who are members of ministerial staff recommended by the department to attend studies abroad. In this appeal, the respondent conceded that the appellant was of military service age and the judge did not find otherwise.
12. The country guidance goes on to state that illegal exit cannot be assumed if a person has been found to be wholly incredible. However, if such a person is found to have left Eritrea on or after August/September 2008 then it may be that inferences can be drawn from their health, history or level of education or their skills profile as to whether legal exit on their part was feasible, provided that such inferences can be drawn in the light of the adverse credibility findings.
13. In this appeal, the judge found that the appellant's account of repeated desertion, arrest and detention was vague and somewhat evasive. He was vague as to when his uncle went to Saudi Arabia and when his uncle visited him in Sawa. He could not say why his uncle went to Saudi Arabia and it was strange that the uncle arranged for the appellant to come to the UK from Italy rather than join him in Saudi Arabia. There was no satisfactory explanation for burying the weapon during the escape or why he was armed in any event. The account of 27-30 absconders or deserters being sent out to collect wood with no guards was not credible. The appellant failed to claim asylum in France and the judge made an adverse credibility finding.
14. The judge did not make a finding as to whether the appellant left Eritrea before or after August/September 2008. There are no findings of fact as to how the appellant might have left Eritrea; if not illegally. There is no analysis of the feasibility of legal exit taking the appellant's profile into account. I find that the judge has not given adequate reasons for finding that the appellant did not leave Eritrea illegally. In the context of a young man of military age, I am satisfied that is a material error of law.
15. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

### **Decision**

16. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the error of law infects the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

17. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed 

Date: 22 April 2016

Judge Archer  
Deputy Judge of the Upper Tribunal