



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

Appeal number: AA/09709/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On May 6, 2016**

**Decisions & Reasons
On May 18, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR BISRAT ASFAHA
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain (Legal Representation)

For the Respondent: Mr Harrison (HOPO)

DECISION AND REASONS

1. The appellant, citizen of Eritrea, was born on July 28, 1946. He arrived in the United Kingdom on June 17, 2014 and claimed asylum on June 21, 2014. The respondent refused his application on October 21, 2014 under paragraphs 336 HC 395 and at the same time a decision was taken to remove him as an illegal entrant by way of directions under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.
2. The appellant appealed that decision on November 17, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Judge of the First-tier Tribunal Holt (hereinafter referred to as “the Judge”) on February 3, 2015 and she dismissed his appeal on all grounds in a decision promulgated on February 17, 2015.
4. The appellant appealed on March 6, 2015 arguing the Judge had erred by failing to have regard to all of the evidence or give adequate reasons for her decision. Permission to appeal was granted by Judge of the First-tier Tribunal Shimmin on March 16, 2015 who found it arguable firstly, the Judge failed to consider the evidence and explanations advanced by the appellant and secondly, the Judge failed to consider and give adequate reasons in respect of the expert’s report.
5. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order now.

PRELIMINARY ISSUES

6. Mr Harrison confirmed it was the respondent’s position that the appellant was not a draft evader and had not left the country illegally.

SUBMISSIONS

7. Mr Hussain adopted the grounds of appeal and submitted the Judge had erred by failing to consider material evidence. The Judge had found that inconsistencies in his recollection about journey times was material but failed to take into account his lack of education and employment opportunities and the expert evidence which concluded the appellant was illiterate. In paragraph [20] of his decision the Judge made a number of findings about what the appellant claimed he had done in Eritrea but the Judge failed to have regard to his whole account and to what he was actually saying. As regards risk on return the expert report made clear that it was plausible that persons over the age of 55 could still be required to undertake military service especially at a time when there was border between Eritrea and its neighbours. The appellant was therefore at risk of further conscription and having left the country illegally would face persecution upon return. The Judge failed to take into account the evidence on these issues and erred in law.
8. Mr Harrison relied on the Rule 24 response and submitted this was a “tightly considered” decision. The expert report had been submitted on the morning of the hearing but the Judge considered the report but rejected some of the conclusions and gave reasons for her decision which were open to her. The expert report refers to “conscription” but that was different to someone who had completed his national service requirement. It lacked credibility to suggest he was never called up until he was over the age of fifty. As regards inconsistencies in his evidence about when he was called up Mr Harrison submitted these were important and asked that notice be taken of the appellant’s answers to questions 24 and 26 when he confirmed it was 1997 and not 1999 as he later claimed.
9. Having heard submissions from both representatives I reserved my decision.

DISCUSSION AND FINDING ON ERROR IN LAW

10. The appellant arrived in the United Kingdom when he was almost sixty-nine years of age. The Judge found the account he had given contained a number of inconsistencies and then having considered the country evidence concluded the appellant would not be at risk, if returned to Eritrea.
11. In considering risk on return the Judge had regard to the decision of MO (illegal exit-risk on return) Eritrea CG [2011] UKUT 00190 and to the fact that the Eritrean authorities continue to envisage lawful exit as being possible for those who are above national service age.
12. The Judge found the appellant's claim to lack credibility after hearing submissions from both parties and after considering "each item of evidence" and having reviewed the evidence as a totality. It was the Judge's approach to credibility that Mr. Hussain submitted was flawed.
13. The Judge set out the appellant's immigration history in paragraphs [11] and [12] of her decision. At paragraph [17] of her decision the Judge found this account to be "very confused and confusing." She found his accounts were "significantly different in terms of the timing of different parts of his journey" and that these discrepancies undermined his credibility generally.
14. The account he gave in his screening interview (as amended by the solicitor's letter dated July 1, 2014) differed to the account given in his interview and witness statement. However, after allowing for the amendment in the solicitor's letter it seems to me that the only significant difference between the accounts was the date he left Eritrea which he claimed in his screening interview was April 15 whereas in his substantive interview and statement he claimed was April 8. All other timings of how long he stayed in a particular place were the same.
15. Bearing in mind his screening interview was conducted in custody a few days after his arrival and the weight that should be attached to such interviews (see YL (2004) UKIAT 00145) I find too much weight may have been attached to the discrepancy arising from his screening interview.
16. I do not think the Judge's approach to this matter would, on its own, amount to an error in law because it is not a core issue of his actual asylum claim. The core issues were firstly, he was forcibly conscripted into the army in either 1997 or 1999 and secondly, that he would be viewed as having left Eritrea illegally.
17. In his substantive interview he was asked questions about his involvement with the armed forces and he answered as follows:
Q24 "So what year did you join the army" he replied, "July 1997" (51 years of age).

Q26 he was then asked, "Have you completed your military service before July 1997" and he replied, "Not before that."

Q27 he explained why he had not been called up namely, "my parents were deceased, I was helping to bring up my family." This answer was reiterated at Q34.

Q28 He was then asked when he was actually called up and he stated "in 1999 I was rounded up and taken away".

Q37 He stated he did not have a demobilisation card because he was "still with the army."

Q62. He was asked "was his job as a soldier the same from 1997 to 2014" and he replied, "from 1999 to 2014 the same."

Q123 He was asked whether he attempted to be exempt from military service and he replied, "yes I requested but not accepted. Now even people who are 65/70 years old are in the army". He further stated at Q126 and Q127 that he asked to be released to be discharged but nobody was listening to his request and that he did every year and at Q168 to 173 he explained how he sought to be demobilised.

Q174 He explained that he left illegally because he had not been demobilised.

Q176 He stated that July 1997 was a "slip of the mouth" and that it was "July 1999".

Q177 He was challenged over his reason for avoiding national service to 1997/1999 and it was put to him that looking after a family would not exempt him. He then stated, "Because I was just avoiding it until I was round up at last I was avoiding it and working with some people who offered me jobs."

18. The Judge considered his account at paragraph [20] of her decision and in particular at sub-sections (i) and (iii) of her decision. Mr Hussain submitted the Judge did not have regard to the expert report of Mr Campbell or the country evidence when assessing his claim.
19. The respondent's case was that it was not credible that the appellant would not remember when he was called up and the fact he gave two dates namely 1997 and 1999 undermined his claim. The respondent also questioned whether the appellant would have been called up when he claimed he was as it was contrary to what was contained in the country evidence.
20. Mr Hussain submitted that the Judge paid no regard to Dr Campbell's report but it is clear from the Judge's decision that she was aware of the report but preferred other evidence that was before her. She specifically drew a distinction between what Dr Campbell stated and what was known about the age of a call up. It was this point that Mr Harrison relied on when inviting me to find no error.
21. Dr Campbell had been asked to consider whether the appellant's claim to have been forcibly conscripted in 1999 (at the age of 53) conflicted with objective evidence. He confirmed that (1) the Eritrean Proclamation on

National Service no.82/1995 announced compulsory conscription of all adults between 18 and 50 and (2) the 12 months' national service component was extended indefinitely in 2002. The fact he was not conscripted between 1994 and 1999, when the appellant was aged between 48 and 53 years of age, reflected the effectiveness of the authorities in his area of residence. A person would not be exempted to look after dependent children or family. He referred to reports that people above 50 were conscripted and he referred to a 2012 Canadian Report and a 2009 Human Rights Watch report. A 2012 US State Department report indicated the criteria for demobilisation were unclear.

22. Mr Hussain's submission is that the Judge ignored this evidence. However, the Judge's decision makes clear that she found that regardless of whether it was 1997 or 1999, when he was first called up, the appellant would have been above the maximum age for national service call up. The Judge had evidence confirming the maximum age as 50 (Operational Guidance Note 3.12.2 and 3.12.3) and she preferred that evidence to Dr Campbell's report and that was something that was open to her. The decision of MO made clear that the appellant's explanation for not being called up was not an acceptable reason and the Judge effectively did not find the appellant's claim credible.
23. Mr Hussain's submission was that the judge did not have regard to Dr Campbell's report but I am satisfied that she was aware of it and rejected it.
24. Mr Hussain submitted the Judge erred in paragraph [20(ii)] of her decision. In his interview he was asked how long he worked at Dekem Hare and at Q86 he confirmed he worked there between October and December 2012. At Q103 he referred to speaking at a meeting on April 5, 2013 and in his statement at paragraph [8] he explained he was returned back to Dekem Hare in March 2013 from where he was based. The Judge's finding that this discrepancy was never satisfactory explained to her does not appear to be supported by the evidence as his explanation was given in his statement. The Judge did not have regard to this but the issue for me ultimately was whether this amounted to an error. I will address this later.
25. The final error alleged in regard to the Judge's assessment of the evidence related to her finding that the appellant would have been arrested earlier if he had been complaining for twelve years. The Judge considered Dr Campbell's report on this issue (paragraph [34] of the report) but rejected his view and I am satisfied the Judge was entitled to reach that conclusion. Dr Campbell's report does not shed any real light why his account may be credible as he merely stated "it accorded with objective evidence and his own research" but he provided no evidence of this.
26. In summary, I find the Judge placed too much weight on whether he was first called up in 1997 or 1999 but I do not find that this materially affected the outcome of this decision because at either age the appellant was over the maximum age of 50 and the Judge simply did not accept he was called

up at either age as it was over the age for being called up for national service.

27. I found that the Judge did not consider the evidence of Dekem Hare correctly but having rejected his claim that he was called up, as alleged, the Judge's error on this issue is not material because she rejected his claim of having been called up in 2013 in any event.
28. The appellant claimed he left illegally but as a person over draft age and having made adverse findings the judge was entitled not to reject his claim of having left illegally and as a 69-year-old male he clearly would not be considered suitable for national service upon return now.
29. Accordingly, I do not find the Judge materially erred in her and I reject the appellant's application.

DECISION

30. There was no material error. I uphold the original decision.

Signed:

Dated: **15 May 2017**



Deputy Upper Tribunal Judge Alis

FEE AWARD

I do not make a fee award as I upheld the decision.

Signed:

Dated: **15 May 2017**



Deputy Upper Tribunal Judge Alis