



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/13073/2015

Appeal Number:

THE IMMIGRATION ACTS

**Heard at North Shields
On 21 July 2016**

**Decision and Reasons
Promulgated
On 21 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**E. Y.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: Mr Constable, Counsel, instructed by Duncan
Lewis & Co Solicitors

For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant claimed asylum in the UK on 27 March 2015, and said that he had entered the UK illegally earlier that day. His claim was based upon his assertion that he was a citizen of Eritrea, and as such faced a real risk of harm upon removal from the UK to that country.

2. The asylum application was refused on 27 October 2015, and a decision was made to remove him from the UK in consequence. The Appellant duly appealed that immigration decision and his appeal was in due course heard by First Tier Tribunal Judge Kainth. The appeal was dismissed in a decision promulgated on 17 March 2016 in the course of which his claim to be a citizen of Eritrea was rejected as untrue.
3. The Appellant lodged an application with the First Tier Tribunal for permission to appeal. The application asserted firstly that the Judge should not have placed any weight upon the languages the Appellant claimed to speak, or not to speak. Secondly it was asserted that the Judge should not have given reduced weight to a publication by Professor Riggan, simply because Counsel who had appeared on the Appellant's behalf had not placed any reliance upon it.
4. The application was granted by First Tier Tribunal Judge Ford on 19 April 2016, but only on the second ground. The first ground was said to disclose no arguable error of law.
5. The Respondent filed a Rule 24 response on 28 April 2016. She pointed out that the second ground did not identify how the content of Professor Riggan's publication was said to have been relevant to the issue the Judge had to decide, and, that Counsel must have concluded it was not relevant. Since the Judge did not overlook its existence the second ground disclosed no arguable error of law.
6. The Appellant made no application pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules.
7. Thus the matter came before me.

Error of law?

8. The first ground was not renewed before me. I need say no more about it.
9. The publication in question appears at B5 of the Appellant's second bundle of documents filed for the appeal. It bears no date, or signature, and it is not at all clear in what medium it has been published, or copied from. Professor Riggan is an Associate Professor at Arcadia University in Pennsylvania, and after an introductory paragraph describing her work as a political anthropologist, there is a title "In between nations; Ethiopian born Eritreans, Liminality, and War", with the text following.

10. There is nothing in the bundle of papers filed for the appeal to suggest that Professor Riggan has given her permission to the publication being used in evidence in the appeal. Moreover the publication in question does not suggest that the author has ever met the Appellant, or, that she has ever been instructed to offer any opinion as expert evidence to be relied upon in his appeal. It is clear that this is not an expert's report analysing his claim to be a citizen of Eritrea, either by his language, or his knowledge of that country.
11. Before me, Mr Constable (who did not appear below) accepted that he had no instructions to challenge as inaccurate the content of paragraph 37 of the Judge's decision. Thus I accept as accurate the Judge's record that the Appellant's former Counsel had made no reference to this publication in the course of his submissions.
12. Mr Constable accepted, correctly, that he could not advance the proposition that the Judge was unaware of this publication. He had made specific reference to it within his decision and he had concluded that its existence and content did not assist him.
13. Accordingly I asked Mr Constable to identify the passages within the publication that he wished to argue would shed light upon whether the Appellant was telling the truth. He was unable to do so.
14. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, the grounds disclose no arguable error of law in the Judge's approach to the evidence. The content of the publication in question was not considered sufficiently relevant to the central issue in dispute in the appeal for the Appellant's former Counsel to have made any reference to it in the course of his representation of the Appellant. Mr Constable is unable to identify to me why that professional assessment was mistaken. The Judge, did not overlook the existence of the publication, and Mr Constable is unable to identify to me any passage within it that was relevant to the central issue in dispute, and which if it had been used by the Judge as the lens through which the Appellant's evidence was considered, could have led to a different result. The Appellant has therefore failed to establish that there was any error of law that requires the decision to be set aside and remade. The decision to dismiss the appeal is therefore confirmed.
15. Accordingly the finding that the Appellant is not a citizen of Eritrea must stand. That being the case there is no prospect of his being removed from the UK to Eritrea. No positive

finding of fact was made by the Judge as to the Appellant's true nationality.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 17 March 2016 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes
Dated 21 July 2016