



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/11333/2015

**THE IMMIGRATION ACTS**

Heard at Liverpool  
On 19<sup>th</sup> April 2017

Decision & Reasons Promulgated  
On 10<sup>th</sup> August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MR DAWIT ASMELASH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. K Lawson, Cohesion Legal Services Centre

For the Respondent: Mr. G Harrison, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Williams promulgated on 22<sup>nd</sup> September 2016. The underlying decision that was the subject of the appeal before the First-tier Tribunal ("FtT") was the decision of the respondent dated 19<sup>th</sup> June 2015 to refuse the appellant's protection claim.

2. The appellant was born on 26<sup>th</sup> May 1988 in Mendefera, and claims to be a national of Eritrea. His father, now deceased, was also born in Mendefera. His mother, with whom the appellant has lost contact, was born in Asmara. He is of Tigre/Tigrinya ethnicity.
3. The Judge of the FtT found that the appellant is a Pentecostal Christian.
4. At paragraphs [19] to [21] of his decision, the FtT Judge acknowledged the appellant's historical and geographical knowledge of the region. The FtT Judge considered the appellant's nationality at paragraphs [25] to [35] of his decision. He found at paragraph [25]  
  
*"It is not reasonably likely, having regard to the matter in the round, that the appellant is an Eritrean (notwithstanding his general knowledge of the country), for the reasons given below (paragraphs 26-35)."*
5. Having regard to the Country Guidance set out in **ST (Ethnic Eritrean - nationality - return) Ethiopia CG [2011] UKUT 00252** and the decision of the Court of Appeal in **MA (Ethiopia) -v- SSHD [2009] EWCA Civ 289**, the FtT Judge found the appellant has not established that he no longer qualifies for Ethiopian citizenship, nor that he has been (or would be) arbitrarily deprived of Ethiopian citizenship. The FtT Judge found, at [32], that the appellant has not acted bona fides, and approached the Ethiopian Embassy to take all reasonably practical steps to seek to obtain the requisite documents to enable him to return.
6. The Judge considered the letter relied upon by the appellant from the 'Eritrean Community in Lambeth'. The weight attached to the letter was limited since it provides no evidence as to the specific information that was gleaned to inform the decision, that the appellant was from Eritrea, and no oral evidence was given by the author that could be tested in cross examination.
7. The omnibus conclusion of the FtT Judge as to the appellant's nationality and his ability to return to Ethiopia is to be found at paragraph [34] of the decision;

*"I am satisfied that the appellant is an Ethiopian subject who was born in Ethiopia. The appellant speaks the language of Ethiopia and has lived and worked in Ethiopia for a prolonged period of time. It is reasonably likely that he would be able to obtain travel documentation to return to Ethiopia."*

8. The appellant complains that in reaching his decision as to the appellant's nationality, the FfT Judge failed to appreciate that Mendefera was part of Ethiopia at the time of the birth of the appellant's parents, but in 1993, those expelled became Eritreans. The appellant submits that his parents lived in Ethiopia until 2000, and they were then deported back to Eritrea. The appellant complains that the FfT Judge speculated that the appellant is an Ethiopian citizen because he spoke in Amharic during his interview and failed to adequately consider the evidence before him, as to where the appellant had lived between 2003 and 2013.
9. Permission to appeal was granted by Upper Tribunal Judge Jordan on 10<sup>th</sup> January 2017. The matter comes before me to consider whether the decision of the FfT involved the making of a material error of law, and if so, to remake the decision.
10. Before me, Mr Lawson relied upon the grounds of appeal and submits that the appellant's evidence that his family were deported from Addis Ababa to Assab in Eritrea, at the beginning of 2000 was set out in the appellant's witness statement. He submits that Eritrea and Ethiopia remained one country until the civil war and the fact that the family had adopted the national language of Ethiopia, rather than Eritrea, should not have been held against the appellant. After the civil war the two countries separated, and the family became Eritrean. Mendefera, where the appellant and his father were born became part of Eritrea, and the appellant now has no entitlement to Ethiopian nationality. Mr Lawson submits that after the civil war, Eritrean nationals lost their Ethiopian citizenship and the family were deported from Ethiopia. As to the events between 2003 and 2013, Mr Lawson submits that the appellant gave evidence that he had fled to Sudan after his release in 2003. He referred me to the answers given by the appellant during his asylum interview. When it was put to the appellant that he had claimed, in his screening

interview, that he had left Eritrea in 2003 and stayed in Addis Ababa with relatives, the appellant claimed he had not said that at all, and that he was in fact referring to his time in Sudan. The appellant had said during the interview that he had mentioned that error to his solicitors, and he understood that they had sent representations to the respondent. Mr Lawson submitted that the solicitors have been asked to provide a copy of the letter sent to the respondent correcting the error in the screening interview but no response has been received.

11. Finally, Mr Lawson submits that the Judge erred in attaching limited weight to the letter from the 'Eritrean Community in Lambeth', as set out at paragraphs [35] of the decision. He submits that the letter is a strong piece of evidence from a reputable organisation, that following enquiries, confirm that the appellant is an Eritrean national. He submits that greater weight should have been attached to that evidence by the Judge.
12. In reply, Mr Harrison submits that the Judge made detailed findings of fact that were open to him on the evidence. He submits that the weight to be placed upon a specific piece of evidence, is a matter for the Judge and at paragraph [35] of his decision, the Judge identifies two reasons for attaching limited weight to the letter from the 'Eritrean Community in Lambeth'. First, the lack of detail as to the specific enquiries carried out to establish that the appellant is an Eritrean national, and second, the fact that the writer of the letter did not attend the hearing and so his evidence could not be tested. He submits that for both the reasons given, it was open to the Judge to treat the letter with caution and attach little weight to it. He submits that reading the decision as a whole, it was open to the Judge to find that the appellant is a national of Ethiopia for the reasons set out.
13. In **R & ors (Iran) v SSHD [2005] EWCA Civ 982**, the Court of Appeal held that before the Tribunal can set aside a decision of a Judge on the grounds of error of law, it has to be satisfied that the correction of the error would have made a material difference to the outcome, or to the fairness of the proceedings. A finding might only be set aside for error of law on the grounds of perversity if it was

irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence.

14. I have carefully read through the decision of FfT Judge William and noted the many criticisms cited at paragraphs [6] to [12] of the appellant's grounds of appeal. The Judge noted at paragraph [26] of his decision that the appellant was born in Mendefera in 1988, which was then part of Ethiopia. He noted, at [27], that the appellant's parents are also of Ethiopian nationality, and that by operation of Ethiopian nationality law, the appellant is an Ethiopian national. The Judge found that the appellant's claim to be an Eritrean national is undermined by the fact that he speaks fluent Amharic (the national language of Ethiopia), and only understands limited Tigrinyan (a national language of Eritrea). The Judge also noted, at [31], that the appellant had accepted in the screening interview that he has relatives in Addis Ababa with whom he lived, working in a garage for 7 years until 2010. The Judge found that the appellant was able to live and work in Ethiopia, as he was a citizen of that country. The Judge found that the appellant's claimed life in Ethiopia from 2003 to 2010 undermines the credibility of his claimed arrest, detention and escape from Eritrea and illegally travelling/living in Sudan between 2003 and 2013.
15. The appellant's credibility was at the heart of the FfT Judge's assessment of the appellant's nationality. At paragraph [13] of his decision, the Judge records the appellant's account that in 2000 he was deported to Assab, Eritrea. In looking at the credibility of the appellant, the FfT Judge notes at paragraph [20] of his decision, that the appellant's claim to have been deported from Ethiopia to Eritrea in 2000 sits well with the country guidance information of Ethiopia having expelled 70,00 Eritreans living in the country during the war. The FfT Judge considered, at paragraph [31], the appellant's account that he was expelled from Ethiopia in the context of the appellant's claim during his screening interview that the appellant had lived in Addis Ababa with relatives, and worked in a garage for seven years

until 2010. The Judge found that he was able to do so as he was a citizen of Ethiopia.

16. The grounds of appeal state that the appellant's parents spoke the Tigrinyan language, but the appellant speaks very little Tigrinyan back to his parents because he attended school where the language spoken was predominantly, Amharic. I reject the appellant's claim that the FfT Judge speculated that the appellant is an Ethiopian citizen because he spoke Amharic during his asylum interview and at the hearing of the appeal before the FfT. A proper reading of paragraph [30] as a whole, demonstrates that the Judge carefully considered the appellant's evidence that he was brought up by parents who spoke Tigrinyan, and who were proud of their Tigrinyan heritage. The Judge noted the appellant's claim that he had lived in Eritrea for nearly 3 years following his return from Ethiopia, but found that the appellant's claim was undermined by his parent's lack of interest and only "now and then speaking" their native language, and the appellant's inability to speak that language.
17. I also reject the appellant's claim that the FfT Judge erred as to the assessment of where the appellant had lived between 2003 and 2010. I have carefully read the screening interview. The appellant was asked about his travel history and he claimed that he left Eritrea in 2003 and went to Ethiopia. He claimed he was with others, and they were helped by smugglers, but his mother had made the arrangements. He stated he was going to meet his relatives in Addis Ababa and he was working in their garage. He stated he was there until 2010 and that although he could do as he liked there, he was not being paid, and so he had to go. He claimed that he then went to Sudan. He explained that a friend gave him the name of a smuggler, and he was then taken to Sudan where he stayed for 3 years. A careful reading of the account given by the appellant during the screening interview discloses a very specific account of the appellant having travelled with smugglers arranged by his mother from Eritrea to Addis Ababa, and then the appellant having travelled with smugglers arranged by himself, from Ethiopia to

Sudan. There was no evidence before the FtT Judge, and there is no evidence even now, of the appellant's representatives having raised any error in that screening interview with the respondent. In my judgement, the FtT Judge considered the appellant's inconsistent account's and it was open to the Judge to find that the appellant's claimed life in Ethiopia between 2003 and 2010 as provided by the appellant in the screening interview, undermines the credibility of the appellant's claimed arrest, detention and escape from Eritrea.

18. I also reject the appellant's claim that the Judge erred in attaching limited weight to the letter from the 'Eritrean Community in Lambeth', as set out at paragraphs [35] of the decision. The appellant's credibility was a significant issue, and the Judge considered the content of the letter in the round with all the other evidence before him. The Judge felt that he could only attach limited weight to the letter because the letter "provides no evidence as to the specific information that was gleaned to inform the decision that the appellant is from Eritrea". I have carefully read the letter. The letter makes general and vague claims that village elders have told them that *"..his family belong to this city and they have confirmed that these particular families have previously dwelled in their village and by this methodology we have managed to authenticate Dawith Asmelash's Eritrean nationality.."*. As the Judge notes, the author of the letter did not attend the hearing so that the evidence could be tested in cross-examination. Given the vague claims in the letter, it was not unreasonable to expect the author of the letter to be in a position to explain the source of the information given in the letter, and how the source is able to speak to such matters. The weight to be attached to the letter was in my judgment, a matter for the Judge. It was in my judgement, open to the Judge to attach little weight to the letter for the two reasons he gave.
19. I have carefully read the paragraphs that the appellant seeks to criticise and the decision as a whole. The Judge carefully sets out the evidence before him and considers the inconsistencies in the evidence, and the explanations given by the appellant. It is now well established that although there is a legal duty to give a

