



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

Appeal Number: PA/00731/2015

THE IMMIGRATION ACTS

Heard at Field House

On 23rd May 2017

**Decision &
Promulgated
On 12th June 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR ZINABU TESFAY HAILE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms O T Taiwo (LR)

For the Respondent: Mr P Armstrong (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Butler, promulgated on 22nd August 2016, following a hearing at Birmingham Sheldon Court on 22nd July 2016. In the determination, the

judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, and claims to have been a national of Eritrea, who was born on 2nd September 1978. He appealed against a decision of the Respondent Secretary of State refusing his asylum claim and his claim for humanitarian protection under paragraph 339C of HC 395, the decision being dated 7th August 2015.

The Judge's Findings

3. IJ Butler did not find the Appellant to be credible, did not find him to have been a national of Eritrea as he claimed, but of Ethiopia, and most importantly did not find him to have suffered ill-treatment on account of an arrest warrant which he submitted, which IJ Butler translated as having been issued eight years before the Appellant left his country to come to the UK seeking asylum. The judge also did not find the Appellant to be a regular churchgoer at the Pentecostal Church in the UK as claimed or, that there was evidence before the Tribunal that the Appellant was HIV positive such as to not be able to return back to his own country.

Grounds of Application

4. The grounds of application state that the judge had fallen into a factual error to the extent of erring in law by basing a finding on a misapprehension of fact. This was to do with the purported warrant of arrest relied upon by the Appellant, as being issued in June 2007, according to the Gregorian calendar, a date which would be substantially inconsistent with the Appellant's account. The dates, however, on the original document, and on the translation, are given in the Ethiopian calendar without conversion. Had there been a proper conversion of the date, it would have shown the arrest warrant to be dated March 2015, a date that would have been consistent with the Appellant's account. On 10th October 2016, permission to appeal was given by the First-tier Tribunal.
5. By determination promulgated on 13th April 2017, the Upper Tribunal under DUTJ Jordan, made findings of an error of law. The Upper Tribunal accepted that the translation of the arrest warrant properly fell to be construed as being in March 2015, rather than eight years prior to the Appellant leaving his country to seek sanctuary in the UK. However, the Tribunal held that the re-making of the decision permits the Tribunal not to re-open the First-tier Tribunal Judge's findings on whether the Appellant had established he was an Eritrean national, so that the finding on his being an Ethiopian national stood as it was found by the judge at first instance. This is because the Appellant had offered insufficient evidence on that issue.

6. Secondly, the Appellant's claim to be a Pentecostal Christian also could not be re-opened as the judge below had already found that the Appellant's claim was not credible in the respect alleged. However, permission was now given to amend the Grounds of Appeal to include raising an issue (if supported by appropriate medical evidence) as to the impact of the Appellant's claim to be suffering from HIV/AIDS to which the First-tier Tribunal Judge made no reference. It is in these circumstances that this matter comes before me today in the Upper Tribunal.

The Hearing

7. At the hearing before me on 23rd May 2017, it was agreed that the only evidence now put forward before this Tribunal, postdated the decision of IJ Butler, and consisted of essentially two letters from the University Hospitals of Leicester NHS Trust. The first of these was dated 2nd November 2016 and the second was dated 19th January 2017. Both were signed off by Dr Sahota, the consultant in infectious diseases at the University Hospitals of Leicester, and were substantially the same. Ms Taiwo, made the following submissions.
8. First, that at paragraph 68 IJ Butler had stated that no evidence had been submitted in relation to the Appellant suffering from AIDS/HIV but this was incorrect. Furthermore, reliance had been placed by the judge upon the old authority of **N v SSHD [2005] UKHL 31** (see paragraph 57 of the refusal letter), but that decision had been now superseded by the Grand Chamber judgment in **Paposhvili v Belgium - 41738/10 (Merits and Just Satisfaction) [2016] ECHR 1113 (13 December 2016)**.
9. Second, in accordance with the direction given by UTJ Jordan, there was to be produced fresh evidence for consideration by this Tribunal.
10. Third, this evidence, from the Leicester University Hospitals, is compelling that the Appellant has chronic HIV and is under treatment.
11. Fourth, the Grand Chamber decision in **Paposhvili** now requires a decision maker to look at the evidence in the receiving country and also consider whether the government in the receiving country would withhold treatment, and in this case, given that the Appellant had fled that country, there was every reason that the treatment would be withheld. Finally, if the Appellant had actually fled from his country then he would not find it easy at all to access HIV treatment, whether that be in Eritrea or in Ethiopia, as against the availability of treatment to him in this country which he was already receiving.
12. For his part, Mr Armstrong submitted that this appeal could not succeed for the following reasons. First, there was simply no objective evidence that the Appellant would not be able to access HIV treatment, given that he had been diagnosed with HIV in Ethiopia itself as long ago as 2010. Second, at paragraph 68 of the determination, the judge had observed that the Appellant had obtained free medical treatment for his condition in

Ethiopia. Third, the two reports by Dr Sahota do not suggest that the Appellant should not be removed. Fourth, Article 3 was still a high threshold, even if **Paposhvili** were to be applied, and nothing had been said to show that this high threshold could be circumvented. Fifth, the findings of Judge Butler in relation to the Appellant's credibility were preserved intact, and if he was not believable on the other issues, he would not be believable on the suggestion that he could not access treatment in Ethiopia either. Sixth, the arrest warrant was just one part of the whole evidence that the Appellant had submitted, and none of that was found to be credible by the judge below. Finally, at paragraph 26 the judge had stated that, "he had said in his screening interview he had no knowledge of any arrest warrants and this account was simply not credible". This showed that, even if the arrest warrant had been wrongly translated, it still remained of dubious value because the Appellant, by his own admission, had stated that he had no knowledge of the arrest warrant against him.

13. For her part, and to Ms Taiwo's great credit, she admitted that she had no evidence showing that the Appellant could not access treatment in Ethiopia or Eritrea. The best she could do was to lay emphasis on his current medical condition as documented in the reports of Dr Sahota.

Re-making the Decision

14. I have re-made the decision on the basis of the findings of the original judge, the evidence before IJ Butler, and the evidence that I have had put before me today, together with the submissions of both representatives in this matter. I am dismissing this appeal for the following reasons. First, this is a case where, as Dr Sahota makes clear in both his reports, the Appellant was actually diagnosed with HIV "in 2010 in Ethiopia". Second, the evidence that the judge gave before IJ Butler was that he "has stated that he received free medical treatment for the condition in Ethiopia" (paragraph 68). Third, notwithstanding **Paposhvili**, it is well established that in order to succeed on health grounds under Article 3, a claimant is required to surmount a particularly high hurdle, and in this case the Appellant simply has not succeeded in doing so. Not only was he diagnosed in 2010 with HIV in Ethiopia but he even received free medical care in Ethiopia for his condition, and if his credibility is damaged in the way that has been indicated by the Tribunals before now, then there is no reason why upon return, he cannot continue to access such treatment. Nor was there any reason for suggesting that such treatment would be withheld. Finally, in point of fact, no evidence to this effect has actually been put before this Tribunal by those representing the Appellant. All in all, accordingly, this appeal cannot succeed.

Notice of Decision

15. I dismiss the appeal.
16. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

10th June 2017