



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

Appeal Number: PA/03219/2015

THE IMMIGRATION ACTS

Heard at: Manchester

Decision and Reasons Promulgated

On: 13th September 2017

On: 26th September 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**AD
(anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Holt, Counsel instructed by Duncan Lewis
For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant claims to be a national of Eritrea, born in 1991. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Shergill) to dismiss his protection appeal.

¹ Permission granted on the 15th May 2017 by First-tier Tribunal Judge Shimmin

Anonymity

2. This case involves a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and the Decision of the First-tier Tribunal

3. The Appellant’s claim was that he had a well-founded fear of persecution for reasons of his religious belief in his home country. That required him to establish, to the lower standard of proof, two matters of fact. First, that he was a Pentecostal Christian. Second, that he was a national of Eritrea. In her refusal letter dated the 30th September 2015 the Respondent appeared to implicitly accept the Appellant’s claimed faith (it does not appear to have been in issue before the First-tier Tribunal). His nationality was, however, put squarely in issue.
4. It was the Appellant’s case that he had been born in Assab in what was then Ethiopia. His parents were of Tigrayan origin and when the independence referendum took place in 1993 they voted in favour of secession from Ethiopia. They nevertheless remained living in Ethiopia (Addis Ababa) where the Appellant grew up speaking Amharic. In 2000 the family were deported to Eritrea, fleeing in 2002 to live in Sudan. He asserted that whatever his nationality might have been at birth, he would not be offered protection by the Ethiopian authorities today and as such his claim cannot be defeated on the grounds that he is entitled to a nationality other than Eritrean.
5. The Respondent’s assessment was that the Appellant had not shown himself to be a national of Eritrea. This was because of his inability to speak more than only basic Tigrinya and his lack of knowledge about Eritrean geography. The Respondent relies on the dicta in MA (Ethiopia) [2009] EWCA Civ 289 to the effect that in cases of disputed nationality the burden lies on applicants to produce ‘best evidence’ that they are not nationals of the country in question. This would include, in the present context, visiting the Ethiopian embassy in London and making a *bona fide* application for nationality documents.

6. When the matter came before the First-tier Tribunal the Appellant relied on an expert report by Dr Pool. He further relied on the country guidance provided by the Upper Tribunal in ST (Ethnic Eritrean – nationality – return) Ethiopia CG [2011] UKUT 252 (IAC). It was submitted that the report and the caselaw supported the Appellant's case in that they established:
 - that ethnic Eritreans who remained in Ethiopia after independence would have avoided the use of Tigrinya, political expediency trumping linguistic heritage
 - that Ethnic Eritreans were expelled from Ethiopia during the war
 - that those persons were then arbitrarily deprived of their Ethiopian nationality
 - persons who found themselves in that position would be likely to face “very significant practical difficulties” in establishing a right of return to Ethiopia
 - a person who left Ethiopia during the war is unlikely to be able to re-acquire Ethiopian nationality as a matter of right by means of the 2003 Nationality Proclamation
 - that the “slightest hint of Eritrean linkage closes any possibility of securing an Ethiopian travel document”
 - that on the facts as presented by the Appellant, the Ethiopian authorities would very likely view his parents as Eritreans.
7. The Tribunal heard evidence from the Appellant, and from a supporting witness, who had been recognised as a refugee by the Respondent and is accepted to be from Eritrea. The Appellant further relied on a letter from Eritrean community elders who confirmed that in their view he was Eritrean.
8. The Tribunal found that the Appellant speaks limited Tigrinya, but was not satisfied that this evidence was conclusive. The evidence of Dr Paul (*sic*) on that point was also inconclusive. The witness had been granted asylum outright by the Home Office and as such his evidence was of less significance than if it had been offered by someone whose credibility had been tested in court. There was a discrepancy between the word ‘Assar’ and ‘Assab’ on the witness’ Home Office ID documents and no sufficient explanation had been given as to why. The letter from the Eritrean community is described as “self-serving” and casts doubt on the Appellant’s evidence that he had no relatives currently living in Eritrea as it refers to “remnant relatives” there. His evidence about his family, and that supplied to the Ethiopian embassy, is vague. It is not

accepted that he is no longer in contact with his family. As to the contact with the embassy the determination makes reference to the decision in MW (Nationality; Art 4 QD; duty to substantiate) Eritrea [2016] UKUT 00453 (IAC). The Tribunal was not satisfied that the Appellant had done everything he could to demonstrate his links to Ethiopia. In their dealings with the embassy the Appellant and his solicitor sought to minimise the strength of his connections to that country.

The Challenge

9. The Appellant submits that the decision of the First-tier Tribunal must be set aside for a failure to make findings on material matters or to give adequate reasons. In particular:
 - i) Detailed submissions were made on the expert evidence which have not been addressed in the determination. The point made, on the basis of Dr Pool's evidence, was that no matter what documents or evidence the Appellant took to the Ethiopian embassy, it still would not recognise him as an Ethiopian. There was in this scenario no point in imposing the *Bradshaw* burden on the Appellant. The First-tier Tribunal erred in failing to give reasons why it disagreed with the expert, and in failing to address this submission at the heart of the Appellant's case.
 - ii) No findings are made on the Appellant's knowledge of Eritrea, in particular Assab. The evidence provided by the Appellant about the city had been verified by the expert and no weight is attached to that point.
 - iii) The determinations finds various pieces of evidence to be "not conclusive" but then fails to identify what weight if any is to be attached to them, either individually or collectively. The reasoning is therefore unclear;
 - iv) No clear findings are made on the evidence of the supporting witness.

Discussion and Findings

10. Having heard the submissions of Mr Holt, Ms Pettersen was prepared to concede on behalf of the Secretary of State that the decision was flawed for a lack of clear reasons. She invited me to set the decision aside and, due to the extent of fact finding required, to remit the matter to the First-tier Tribunal for remaking.

11. I agree that the decision must be set aside for that reason. The Tribunal makes no assessment of the Appellant's evidence about Assab, nor of Dr Pool's analysis of his answers at interview. It finds several pieces of evidence to not to be "conclusive" (itself an unhelpful term) but fails to spell out what weight if any is given to the evidence in question.
12. For instance, the evidence of the supporting witness was that he had lived in Assab at the same time as the Appellant and his family; their fathers had been close friends. He had met the Appellant at church in Assab. He had subsequently met with the Appellant in Sudan. He knew him well and as far as he was concerned he was Eritrean. This was plainly all relevant evidence, but it is neither recorded nor evaluated in the determination. There is nothing intrinsically wrong with the observation [at 24] that the weight to be attached to his evidence, as a person granted protection upon application, was less than that to be attached to testimony that had survived the forensic challenge of cross examination, but that was not the end of the matter. The Tribunal was obliged to assess the evidence, and to give reasons one way or the other about why it was accepted as truthful or it wasn't. It may still have still attracted considerable weight, notwithstanding the witness' outright grant of asylum. I would add this. The determination alludes to caselaw on the point. The Tribunal may have had in mind AB (Witness corroboration in asylum appeals) Somalia [2004] UKIAT 00125 in which the following guidance was given:

"11. We would add a comment on the growing practice of appellants and/or their representatives adducing letters granting refugee status to someone who is (or is said to be) a relative or colleague. All too often it is assumed such letters magically prove that the person concerned was granted refugee status on the basis he says he was. All too rarely are such letters accompanied by documents confirming on what basis the person concerned actually claimed asylum or, if an appeal was involved, on what basis the Adjudicator allowed that person's appeal. Since such additional documentation should often be still available to the person concerned or to that person's solicitors, Adjudicators should consider what weight they can attach to refugee grant letters when they are not accompanied by confirmatory documents of this kind".

13. In this case there *was* a bundle produced relating to the witness which established what the basis of his claim had been (Pentecostal Christian from Eritrea), including a clear statement in his screening interview and asylum interview that he was born in Assab (the Home Office recording of his place of birth as Asar was clearly an error and I am mystified as to why the Tribunal thought otherwise). It was therefore wholly inappropriate that the witness' testimony was apparently discounted simply applying the *ratio* of AB.

14. Before me Mr Holt concentrated his submissions on ground (i). In view of the Secretary of State's concession (above) I need not address this point in great detail but would sound a note of caution. The case for the Appellant is that while he has done all he can reasonably be expected to do in establishing that he is not Ethiopian, the real focus of the Tribunal should have been on the evidence of Dr Pool and the findings in ST. This was to the effect that a person in the position that the Appellant claims to be in will find it very difficult to establish that he is entitled to the protection of the Ethiopian state. As I understand Mr Holt's submissions, they are that the weight of this evidence was such that the Appellant need logically do no more to discharge the *Bradshaw* burden. I understand the point, but I am not so sure it is one that will ultimately bear fruit for the Appellant. That is because the point that the Court of Appeal make in MA (Ethiopia) is that applicants should be expected to produce the best evidence that they can in circumstances of disputed nationality. The decision in MW does not extend the principle, it just applies it. In that case the applicant was found to have relatives to whom he could turn to seek information and if necessary, documents. Had such information or documentation been supplied to the Ethiopian embassy its decision might have been different. The Appellant's representatives may wish to consider my observations in their preparation of the appeal for the First-tier Tribunal.

Decision

15. The determination of the First-tier Tribunal contains an error of law and it is set aside by consent.
16. The matter is to be heard de novo in the First-tier Tribunal.
17. There is an order for anonymity.

Upper Tribunal Judge Bruce
25th September 2017