



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

Appeal Number: PA/10883/2016

THE IMMIGRATION ACTS

At: Manchester Piccadilly

Decision

Reasons

On: 8th February 2018

Promulgated

On: 20th April 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**BHE
(anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Wood, IAS Manchester

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant claims to be a national of Eritrea, born in 1989. He appeals with permission the 20th February 2017 decision of First-tier Tribunal Ransley to dismiss his protection appeal.

Anonymity Order

2. This appeal concerns 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 Matters in Issue

3. The basis of the Appellant’s claim for international protection is that he is a Pentecostal Christian who would face a real risk of persecution in his home country for reasons of his religious belief. It is further asserted that he would face persecution for reasons of imputed political opinion, because he has evaded the draft and does not wish to complete military service on behalf of the Eritrean government.
4. He asserts that his personal history is as follows. He was born in Ela Beried, in the region that was to become Eritrea, in 1989. In 1991 he and his family moved to Ethiopia where he attended school and learned Amharic. Nine years later they were deported back to Eritrea. There he learned Tigrinya, finished school and worked on a farm. He received his military call-up papers but hid on the farm to avoid the army - he had by then been baptised and did not want to fight. In November 2011 he was detained following a raid on a house church where he was worshipping. He was held in detention for approximately one month before being released upon payment of a bribe. He fled Eritrea for Sudan. He married there in 2012. He subsequently moved to Libya from where he attempted to reach Europe by sea. He was rescued from a stricken vessel off the coast of Italy. From there he made his way to France, and then the UK where he claimed asylum.
5. The Respondent refused protection on the 19th September 2016. She doubted whether the Appellant was in fact Eritrean, but even if he was he had not demonstrated that he was not also entitled to Ethiopian nationality. At the time of his birth his place of birth was part of Ethiopia. His parents were both born in Ethiopia. Reliance was

placed on the decision in ST (Ethnic Eritrea - nationality - return) Ethiopia CG [2011] UKUT 52. Since there was no evidence to show that the Appellant had done all he reasonably could to facilitate his return to Ethiopia, he had not discharged the burden of proof upon him in respect of his claimed nationality. As far as the Respondent was concerned, the claim was defeated on this ground alone. She added for good measure, however, that she did not accept that the Appellant was a Pentecostal Christian, since he had failed to correctly answer various questions put to him in interview.

6. When the matter came before First-tier Tribunal Ransley she heard live evidence from the Appellant, and from a supporting witness, an Eritrean man named F who had been recognised as a refugee on the basis that he is a Pentecostal Christian. She was further asked to take into account written evidence from a Pentecostal Christian priest, Pastor Getachew of the Jerusalem Church, Manchester. Pastor Getachew had written to the Tribunal on the 26th January 2017 to state that it was his belief that the Appellant is of the Pentecostal faith, and that he regularly attends for worship at that church.
7. In respect of the Appellant's claimed faith Judge Ransley made the following findings:
 - There were significant discrepancies in the Appellant's evidence. He had told his interviewing officer that he could not remember when the Pentecostal Church in Eritrea had been banned because he was not then in the country, but on this own chronology he was. He then said he was a minor at the time but he was 22. He gave the names of three Pentecostal Pastors claiming that they had all been arrested in 2009 when in fact none of them had. He was unable to give the names of any prominent leaders of the Pentecostal church
 - The chronology of claimed events in Eritrea is internally inconsistent
 - The evidence of Pastor Getachew attracted little weight. His letter was unsatisfactory as he gave no information on how he assessed the Appellant's faith, or how long any assessment took. It is also material that he "did not attend the hearing to testify on behalf of the Appellant and no explanation has been given for his non-attendance as a *Dorodian* witness
 - The Appellant was asked a series of legitimate questions at interview which he was not able to answer correctly
 - The evidence of F, that he met the Appellant in the 'Jungle' and that he knows him to be a Pentecostal can be given

little weight for two reasons. Firstly because his own evidence was never tested before a Tribunal – he was given asylum directly by the Secretary of State for the Home Department. Secondly because he cannot speak to the core of the claim, that the Appellant was a practising Pentecostal in Eritrea

At paragraph 38 Judge Ransley records that she has had regard to the Appellant's 'rebuttal statement' ie the statement drafted in response to the refusal letter, but that nothing therein satisfactorily addresses the serious credibility issues arising from the remaining evidence. She rejects the contention that the Appellant is a Pentecostal Christian.

8. The determination then moves on to address the remaining matter in issue, whether the Appellant is Eritrean, or rather whether he is also entitled to Ethiopian nationality and so could therefore be expected to avail himself of the protection of that country. Judge Ransley refers herself to the decision in ST and its conclusion that Ethiopian nationality law is complex; whether an ethnic Eritrean would qualify depends on his personal history, profile and circumstances. Taking into account the Appellant's evidence about his, the Tribunal concludes:

- That the Appellant has told so many untruths that his evidence that he has lost contact with his wife in Sudan (and so cannot obtain any of the relevant documents from her) cannot be accepted
- It is accepted that the Appellant did visit the Ethiopian embassy in London on the 23rd January 2017 but there was nothing to show that a *bona fide* attempt had there been made to establish a right to return to Ethiopia

The conclusion is reached that the Appellant has not discharged the burden of proof to show that he cannot get an Ethiopian passport.

9. The Tribunal having found against the Appellant on both central matters in issue in his case, the appeal was dismissed.

10. The Appellant now appeals the decision of the First-tier Tribunal on the following grounds:

- i) In reaching its credibility findings the First-tier Tribunal has failed to have any regard to the explanatory evidence of the Appellant. It has simply adopted the reasoning in the refusal letter without considering the Appellant's witness statement or live evidence. A failure to take material evidence into account is an error of law that renders the decision unfair and unsafe.

- ii) The Tribunal erred in its approach to the '*Dorodian*' evidence. It again failed to take material evidence into account, viz the fact that a letter from Pastor Getachew had been accepted as reliable evidence by the Home Office in the case of F. It is further submitted that the Tribunal erred as a matter of fact when it said that no explanation had been given for the Pastor's non-attendance at court. Explanation was given on the face of the letter. As for F it was improper and unlawful to reject his evidence because he had not initially been refused asylum. He had attended court and had submitted his evidence to be tested; the Tribunal further failed to have regard to the fact that the HOPO did not challenge F's evidence. F gave evidence that he attends the same church as the Appellant today and that he genuinely believes him to be a Pentecostal Christian. If that evidence was to be rejected some reason had to be given.
- iii) In respect of Ethiopian nationality it is submitted that the Tribunal failed to give reasons for rejecting the Appellant's evidence about what happened in the Ethiopian embassy. In stating that there was no meaningful basis upon which she could reach a conclusion in his favour Judge Ransley failed to have regard to the guidance in ST.

11. For the Respondent Mr Diwnycz conceded that there may be a question mark over the Tribunal's approach to ST. The Appellant had asserted that he was born in Ela Beried and that he and his parents were deported from Ethiopia in 2000. The Secretary of State for the Home Department accepts that the determination does not contain clear findings on whether those matters can be accepted, or whether, applying the guidance in ST, it could be said that it was at all likely that the Appellant would be able to assert a right to Ethiopian nationality. In respect of grounds (i) and (ii) Mr Diwnycz submitted that the findings were open to Judge Ransley and that the Respondent adopted her reasoning.

Discussion and Findings

12. The parties agreed that my findings on ground (i) could be positively determinative of this appeal, that is to say if it is made out the decision would need to be set aside in its entirety. I therefore begin with this. The complaint, in essence, is that the Appellant's evidence was not factored into the balance when the First-tier Tribunal made its assessment of credibility.

13. Following the Appellant's asylum interview the Respondent had squarely placed his credibility in issue, with the refusal letter setting out several matters said to be vague, internally consistent and/or contradictory to the country background material. Many, of not all, of these points are accepted by Judge Ransley. I am not persuaded that this in itself was an error. A judge is plainly entitled to accept the analysis of the Respondent if she agrees with it. Whilst word-for-word adoption of the refusal letter might give an unfortunate impression, it cannot be said to be an error of law. Nor can there be any concern in this case that the rebuttal statement and live evidence were entirely overlooked: the determination expressly refers to this material at paragraphs 12 and 38. Mr Wood nevertheless submits that nowhere in the determination is it apparent that the Tribunal has weighed in the balance the explanations given by the Appellant. Is this true, and if so is it material?
14. The grounds identify the relevant parts of the witness statement as being paragraphs 78-82, wherein the Appellant addresses the Respondent's concerns about his apparent lack of knowledge of the church hierarchy. In short the Appellant's response to refusal letter is to say that he is not much concerned with the names of prominent Pentecostals or who the leadership of his church are, since these are matters irrelevant to his faith and his relationship with God. He did not know any of these people personally, so although he could recall praying for the safety of individuals detained, he did not consider it important to memorise their names or the dates of their arrests. The Respondent says that the Appellant was unable to explain why Pentecostals face problems in Eritrea but the Appellant rejects this: he had explained that they come into conflict with the state because of their objection to military service. The Respondent had criticised the Appellant for not being able to identify when the church was banned in Eritrea. The Appellant had said that he was unable to say because he was a child at the relevant time. The reasons for refusal letter had rejected this on the grounds that the Appellant was 22 years old. In his rebuttal statement the Appellant protests that this is completely wrong - he was a minor at the time (he was 13 in 2002). The Appellant further queries why the letter from the Jerusalem Church was rejected by the Respondent when she had accepted letters from the same Pastor, and the same church, in the same terms, written for the Appellant's friends. In other cases the letter was taken as evidence of faith and refugee status had been granted.
15. As Mr Woods submits, it is correct to say that the entirety of paragraphs 29-37 of the determination - the reasoning on the Appellant's claimed practice of Pentecostalism in Eritrea - reflects the Respondent's position. I have been unable to identify anywhere in those passages where the Appellant's evidence is considered. Mr Wood is therefore at least half way home in respect of ground (i). Mr

Diwnycz urged me to find any omission immaterial, given the terms in which the Tribunal expresses itself at paragraph 38 of the determination, in stating that it has taken the rebuttal statement into account: "I find that the Appellant has failed to give satisfactory or credible evidence to resolve the many serious credibility issues raised in the refusal letter". I have borne that in mind, and I have no doubt that the Tribunal did read all of the evidence before it. The difficulty remains that the Appellant does not know why his explanations have been found wanting, since no reasons are given for why they are neither satisfactory nor credible. In the absence of reasons I must find, with some reluctance, ground (i) to be made out.

16. It follows that I need not deal with grounds (ii) and (iii) since Mr Diwnycz accepted that the adverse credibility findings reached in respect of the 'historical' claim were in the end determinative of whether the Appellant is in fact a Pentecostal Christian today, and whether he has made a *bona fide* attempt to avail himself of the protection of the Ethiopian authorities, and this means that the entire decision must be set aside.
17. I would just add this. That in respect of the witness F two reasons are given for declining to place weight on his evidence. The first is that he had only met the Appellant in Calais. That is true and the Tribunal was quite right to conclude that he could contribute nothing to the debate about whether the Appellant had been a practising Pentecostal Christian whilst living in Eritrea. F had however given evidence that he regularly worships alongside the Appellant in this country, and that he believes him to be a genuine Christian. Since the Appellant's case did not depend entirely on making out his historical claim that was important evidence that merited some evaluation.
18. The second reason given for rejecting F's evidence is that he had been given asylum by the Home Office without ever having appeared before the Tribunal. Mr Woods protests that being believed by the Home Office is hardly grounds to diminish the weight to be attached to F's evidence. He rightly points out that F had submitted himself to cross-examination before *this* Tribunal and so there was the opportunity to test his evidence, an opportunity that the HOPO declined to take. Having had regard to the evidence I am satisfied that this ground is made out. The First-tier Tribunal no doubt had in mind the decisions in AB (Witness corroboration in asylum appeals) Somalia [2004] UKIAT 00125 and AC (Somalia) v Secretary of State for the Home Department [2005] UKAIT 124 in which the Upper Tribunal deprecated the practice of producing a refugee witness and expecting all his assertions about why he was granted to be accepted at face value. In AB the Tribunal said this:

“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”.

19. In this instance, F had produced all of the confirmatory documentation, including his screening and substantive asylum interview records. This was not a case where this Tribunal had reason to doubt his evidence (as in AB and AC): to the contrary his statement went unchallenged. As such the fact that he had been recognised as a refugee was not a proper basis to diminish the weight to be attached to his testimony.

Decisions

20. The decision of the First-tier Tribunal is set aside for error of law.
21. The decision is to be remade *de novo* before a differently constituted First-tier Tribunal.
22. There is an order for anonymity.



Upper Tribunal Judge Bruce
19th April 2018

