



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

Appeal Number: PA/01229/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 28th September 2020**

**Decision & Reasons Promulgated
On 3rd November 2020**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**T B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Moffatt, instructed by Sutovic & Hartigan

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant claims to be an Eritrean national born in October 2001. He arrived in the UK on 23 August 2018 and claimed asylum. He appeals against the decision of First-tier Tribunal Judge G D Davison, promulgated on 17 March 2020, dismissing his protection claim on asylum, humanitarian protection and human rights grounds.
2. The issue before the First-tier Tribunal was whether the Appellant was an Eritrean national. The judge made the following relevant findings:

“7. It was accepted by both parties that the sole issue for determination was the Appellant’s nationality. The refusal letter accepted if he were Eritrean, he would have a problem on return as a result of military service. The Appellant had also claimed his Pentecostal faith would place him at risk but in either event the primary issue is whether, to the lower standard, he is Eritrean as claimed.”

“21. As noted above the sole issue for determination is whether the Appellant is Eritrean. The Appellant does not dispute that he has very limited knowledge of his home area of Assab. He knew there was a mosque and a big pitch he used to play on. He thought there were nine regions in Eritrea not six.”

At [22] to [28] the judge gave reasons for finding that the Appellant’s claim to be Eritrean was not credible and for rejecting the evidence of his witnesses.

“29. There is a low burden in asylum, I remind myself of the age of the Appellant when he is said to have left Eritrea, the lack of education he claims and the issues he and his aunt are said to have faced in Sudan. But even making due allowances for all of these issues, I conclude to the lower standard that the Appellant has not discharged the burden to establish that he is a national of Eritrea as claimed.”

“30. The parties agreed that if this were my finding the appeal would stand to be dismissed on all grounds.”

3. Permission to appeal was sought on the following four grounds:

- (i) The judge failed to apply the standards and guidance applicable to the evidence of minors given the Appellant entered the UK as a minor and had turned 18 years old some three months prior to the hearing;
- (ii) the judge failed to take account of a relevant consideration, namely the inherent limitations on the memory of a child under the age of six;
- (iii) the judge’s limitation of his consideration of credibility to evidence specific to the Appellant’s nationality failed to take into account relevant matters; and/or
- (iv) the judge failed to make findings on material matters, namely the risk to the Appellant as a Pentecostal Christian on return to Eritrea and very significant obstacles to reintegration.

4. Permission was granted by First-tier Tribunal Judge Pooler on 20 April 2020 on the following grounds:

“The judge directs himself at paragraph 4 as to the correct burden and standard of proof and referred at paragraph 29 to the Appellant’s age when he claimed to have left Eritrea and to his lack of education. It is however arguable that the judge failed to take certain evidence,

identified in the grounds, into account when assessing credibility. In these circumstances, all grounds may be argued.”

Submissions

5. Ms Moffatt submitted that grounds (i) to (iii) concerned the Appellant’s nationality but ground (iv) related to the judge’s failure to make findings on a completely different issue, namely whether the Appellant would be at risk on return to Eritrea as a result of his Pentecostal faith.
6. Ms Moffatt stated she would address ground (iv) at the outset and then deal with the other three grounds. It was apparent from the refusal decision that the Appellant would be removed to Eritrea notwithstanding the Respondent did not accept that he had established Eritrean nationality.
7. Ms Moffatt submitted that Pentecostal Christianity is illegal in Eritrea and therefore, even if the Appellant is not an Eritrean national, he would still be at risk on return to Eritrea on account of being a Pentecostal Christian. The judge failed to make findings on whether the Appellant was a Pentecostal Christian and there was evidence in the CPIN of February 2018 (paragraphs 2.2.7, 2.2.8, 6.1 and 6.3) which showed that the Appellant would be at risk on return. Members of the Pentecostal faith were considered to be an unregistered religious group and would be subject to persecution. The Appellant would be subject to this risk irrespective of his nationality. The judge had erred at [7] of the decision in limiting his findings to nationality and failing to deal with risk on return. There were no findings in the decision in relation to the Appellant’s faith and, had the judge accepted his credibility on that point, the Appellant would not act discreetly on return and therefore he would be at risk of ill-treatment.
8. In relation to grounds (i) to (iii) Ms Moffatt submitted the judge had failed to take into account material matters in his assessment of credibility. The basis of the adverse credibility finding was that the Appellant’s knowledge of Eritrea was vague in the extreme, the expert evidence was inconclusive and the witness evidence was irrelevant. The judge found that the inconsistencies referred to at [24] and [25] were not particularly weighty.
9. The judge’s assessment of credibility was flawed because the judge failed to consider the relevance of the Appellant’s age. At [11], the judge mistakenly recorded the Appellant was 18 years old when he arrived in the UK when, in fact, he was 16 years old. This was a material mistake of fact which was apparent from counsel’s verbatim note of the Record of Proceedings attached to grounds.

10. I noted the judge's Record of Proceedings was consistent with counsel's record. Ms Moffatt submitted, as a result of this material mistake, the judge failed to take into account that the Appellant was a minor when he entered the UK. The judge may well have taken into account the Appellant's age on leaving Eritrea but this was not sufficient to show that he applied the correct guidance in assessing the evidence of an unaccompanied minor. Further, the judge had asked the Appellant at the hearing how close the city of Assab was to the sea. Given that the Appellant had left Eritrea at the age of six and had only recently turned 18 years old, the judge's question was confusing when read in the context of the cross-examination.
11. In relation to ground (iii), Ms Moffatt submitted the judge failed to take into account evidence in the Respondent's bundle, in particular the Social Services Pathway, which was directly relevant to the Appellant's nationality and to the consistency of his claim. There was also evidence of his claim to be a Pentecostal Christian. The judge's failure to refer to this evidence was material and capable of affecting the outcome of the appeal.
12. There was evidence in the Appellant's bundle which showed that his evidence was consistent and the judge failed to take this into account. There were witness statements from people who had known the Appellant for two years and it was relevant to the context of the Appellant's claim. When read as a whole this evidence supported the consistency of the Appellant's claim and should be weighed in the balance. The judge had failed to do so.
13. There was also a factual error in the judge's assessment of the second witness at [28]. It was clear from the skeleton argument before the First-tier Tribunal that the Ethiopian Christian Fellowship Church in the UK was made up of Ethiopians and Eritreans.
14. Mr Whitwell addressed ground (iv) and submitted that the sole issue for determination in the appeal was the Appellant's nationality and this was apparent at [7]. He accepted that there were no findings on the Appellant's religion but it was clear from [19], where the judge summarised the submissions made on behalf of the Appellant, that this point was not argued before the First-tier Tribunal. It was not apparent from the skeleton argument that the Appellant's religion was relevant to assessing the Appellant's Article 8 claim and whether there were significant obstacles to reintegration. There was nothing on the face of the decision to show the point, that the Appellant would be at risk on return to Eritrea because he was a Pentecostal Christian, was argued before the judge.
15. In relation to the remaining grounds, Mr Whitwell submitted that there was nothing in the decision to show that the judge erroneously took into

account the Appellant's age and applied it to his findings. The Appellant's age was not into dispute. The judge was quite clear of the Appellant's age having given his date of birth in [1]. The judge took into account the Appellant's age at [22] stating: "This is not, in my finding, explained away due to age and lack of education."

16. Mr Whitwell submitted the discrepancies in the Appellant's account could not be explained away due to age or lack of education. The Appellant's age on arrival in the UK was irrelevant to the judge's credibility findings made at [22] to [27]. The judge's question about how far Assab was from the sea was not an unreasonable one. Even a six year old child would know if the town in which he lived was near the sea, in particular, since he was able to state that he lived near a mosque and a playground.
17. The Social Services evidence did not detract from the judge's credibility findings and the witnesses' evidence was not indicative of someone who was Eritrean. The judge's inference in relation to the Ethiopian Church was a reasonable one and the judge's decision to dismiss the Appellant's protection claim was sustainable.
18. In response, Ms Moffatt submitted that the Appellant did say the town of Assab was near the Red Sea. He was unable to say how near, which would depend on where the Appellant lived in the town. The points relied on by the judge should not form the basis of an adverse credibility finding, which was all about the Appellant's vague recollection of Eritrea. The way the judge approached his finding was flawed and he had failed to apply the principles relevant to the evidence of minors.
19. There was some discussion as to the disposal of this appeal. Mr Whitwell was of the view that the matters relied on in this appeal were not raised before the First-tier Tribunal. Ms Moffatt was in a difficult position because she represented the Appellant before the First-tier Tribunal. Consideration was given to whether it was necessary to adjourn the hearing to enable Ms Moffatt to make a witness statement and for alternative counsel to be instructed. However, it was apparent from the judge's Record of Proceedings and [19] of the decision, that Ms Moffatt relied on her skeleton argument in which she dealt with risk on return as a Pentecostal Christian and Article 8. The judge did not make findings on these two issues.
20. I found that the judge erred in law in failing to make findings on Article 8. The Appellant's religion would be relevant to whether there were very significant obstacles to reintegration. Notwithstanding the judge's conclusion at [30], it did not follow that the Appellant's failure to prove nationality would necessarily lead to a finding that there were no very significant obstacles to reintegration. Even if the point was not properly argued before the judge, it was apparent from the grounds of appeal and

the skeleton argument that risk on return as a Pentecostal Christian and Article 8 were relied on. It was clear from the refusal letter that removal to Eritrea was a point that needed to be considered. Accordingly, I concluded that there was a material error of law and a further hearing would be necessary to decide those issues.

21. There then remained the issue of whether the protection claim should be relitigated on the basis that the judge's credibility findings were flawed. If that were the case, then it was agreed by the parties that the appeal should be remitted to the First-tier Tribunal for a complete rehearing on all issues. If I found the judge had not erred in law in his assessment of credibility at [21] to [28], the matter could remain with the Upper Tribunal.
22. It was agreed that, if the appeal remained in the Upper Tribunal, the issues to be decided would be whether the Appellant would be at risk of Article 3 treatment because he was a Pentecostal Christian and whether there were very significant obstacles to reintegration. A finding that the Appellant would be at risk of Article 3 treatment would mean that the Appellant's appeal would also succeed on Article 8 grounds because there would be very significant obstacles to reintegration. However, it did not follow that very significant obstacles to integration would breach the Article 3 threshold.
23. Ms Moffatt relied on Schedule 2 paragraph 8 Immigration Act 1971 Act to demonstrate that the country of proposed removal was relevant because the Appellant could be returned to Eritrea notwithstanding the Respondent did not accept that he was a national of Eritrea.

Conclusion and Reasons

24. I find that the judge failed to address the risk on return to Eritrea as a Pentecostal Christian. It was clear from the refusal letter that the Respondent would return the Appellant to Eritrea notwithstanding it was not accepted he was a national of Eritrea. Therefore, it was incumbent on the judge to make findings on the risk on return to Eritrea as a Pentecostal Christian, even if he did not accept the Appellant was an Eritrean national. I am satisfied that the matter was raised in the Appellant's skeleton argument and that Ms Moffatt relied on the skeleton argument in her submissions. The fact that she did not make any oral submissions before the First-tier Tribunal did not mean the judge did not have to address this issue in his decision because the point was made adequately in writing in the skeleton argument.
25. I am also satisfied that the judge erred in law in failing to make any findings on Article 8. It was apparent from the grounds of appeal to the First-tier Tribunal that Article 8 was an issue and the judge's failure to

address the Article 8 claim, which was clearly apparent on the face of the papers, was an error of law.

26. In relation to credibility, grounds (i) to (iii), I find on reading the decision as a whole, the judge failed to take into account the Appellant's age in assessing his claim and failed to apply relevant guidelines. The Appellant was six years old when he left Eritrea. The judge's finding at [22] when put into context is not sustainable. The judge criticised the Appellant for giving incorrect evidence rather than claiming that he did not know. I am persuaded that the points made by Ms Moffatt in her submissions demonstrate an error of law in the judge's assessment of credibility.
27. Accordingly, I find the judge has made material errors of law and I set aside the decision promulgated on 17 March 2020 in its entirety. None of the judge's findings are preserved. The matter is remitted to the First-tier Tribunal for rehearing *de novo*.

Notice of Decision

Appeal allowed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed

Date: 19 October 2020

Upper Tribunal Judge Frances

TO THE RESPONDENT **FEE AWARD**

I make no fee award. The appeal remains outstanding.

J Frances

Signed

Date: 19 October 2020

Upper Tribunal Judge Frances