



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

Appeal Number: PA/09663/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 2 March 2020**

**Decision & Reasons Promulgated
On 18 March 2020**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**ROBEL SOLOMON
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alex Burrett, Counsel instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr Nigel Bramble, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Ross dismissing his appeal against the respondent's refusal of international protection or leave to remain on human rights grounds based on the First-tier Judge's finding that the appellant is not as he asserts a citizen of Eritrea.
2. The respondent accepted that the appellant is a Pentecostal Christian and that if he were able to establish Eritrean citizenship he would be at risk of persecution on return in Eritrea.

3. The appellant's account is that he was born in 1994 and arrived in the United Kingdom in 2019 when he was 24 years old, claiming asylum the same day. The appellant speaks mainly Amharic and hardly any Tigrinya, which is the principal Eritrean language: he gave evidence in Amharic.
4. The appellant's account of travels between Eritrea and Ethiopia as a younger person was rejected by the First-tier Judge for the reasons in his decision and, in particular, those given in the summary of the appellant's evidence which begins at paragraph 12 and in the conclusions which begin at paragraph 20, and conclude at paragraph 28.

Grounds of appeal

5. The grounds of appeal challenge the decision of the First-tier Tribunal in three ways. First, the appellant asserts that it was an error of law for the First-tier Tribunal Judge to approach this appeal on the basis that the key issue was whether he came from Eritrea or Ethiopia. That ground is unarguable. This case turns on the appellant's nationality: the appellant's case is that he is Eritrean, and the respondent accepted that if he were Eritrean, he would be at risk. That was the key issue and the Judge did not err in so concluding.
6. Second, the appellant challenges the First-tier Tribunal Judge's finding of fact that the appellant is not an Eritrean citizen, which was made principally on the basis of his being an Amharic speaker and of his inability to speak Tigrinya, the main language spoken in Eritrea. Again, that finding was unarguably open to the Judge.
7. Thirdly, Mr Burrett argued in the grounds of appeal (but not in the First-tier Tribunal) that in applying *MA (Disputed Nationality) Ethiopia* [2008] UKAIT 00032 the First-tier Judge failed to consider whether the appellant was *de jure* a national of Eritrea. Mr Burrett accepted that when representing the appellant before the First-tier Tribunal, he did not put the case in that way.
8. The First-tier Tribunal Judge cannot be expected to make findings on arguments which were not put before him, and there was and is no evidence before the Tribunal to establish whether the appellant meets any of the criteria for *de jure* Eritrean citizenship. Nothing in the evidence before me seeks to establish where the appellant was born, nor how that might engage the nationality law of Eritrea. No copy of the relevant legal provisions of Eritrean law, nor any international expert evidence as to how Eritrean nationality is acquired, has been produced or relied upon in these proceedings.
9. When I explored this with Mr Burrett, he said that the evidence of *de jure* nationality on which the appellant relied was his own oral evidence. The appellant's oral evidence was considered by the First-tier Tribunal Judge, together with the oral evidence of the witness Thomas Solomon, which was given little weight for the reasons set out in paragraphs 24 to 26 of

the decision. The Judge made proper, intelligible and adequate findings on the appellant's nationality on the evidence before him.

10. The grounds of appeal ask the Upper Tribunal to go behind the First-tier Tribunal's finding of fact as to nationality made by the First-tier Tribunal on grounds which are unarguable. The high standard for interference with a finding of fact and/or credibility by the First-tier Tribunal Judge, set out by Lord Justice Brooke at paragraph 90 in *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982 is not reached.
11. This appeal is dismissed. The decision of the First-tier Tribunal stands.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed **Judith AJC Gleeson**
2020

Date: 8 March

Upper Tribunal Judge Gleeson