



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-001635
[IA/03440/2021] PA/51549/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 22 August 2022**

**Decision & Reasons Promulgated
On the 10 October 2022**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**HN
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

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

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

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

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the decision issued on 10 January 2022 of First-tier Tribunal Judge Parkes which refused the asylum and human rights claim of HN.
2. HN claims to be a national of Eritrea with a date of birth of 20 June 1995. The respondent did not accept his claim to be Eritrean and stated in the refusal decision that he was a national of Ethiopia; see paragraph 50 of the respondent's decision dated 24 March 2021. As also shown in the respondent's decision, for example, in paragraphs 6 and 39 - 42 of the decision, the appellant claimed to be of Tigrinyan ethnicity.
3. The First-tier Tribunal did not find that the appellant was Eritrean; see paragraph 23. He was found to be Ethiopian, as set out in the same paragraph. There is no clear finding on whether the appellant is of Tigrinyan ethnicity but the judge did indicate in paragraph 24, briefly, that the appellant had not shown that there was a risk to him as someone of Tigrinyan ethnicity in Ethiopia.
4. The appellant brought two main challenges to the decision of the First-tier Tribunal. Firstly, the findings and reasoning regarding his claim to be Eritrean were in error.
5. Secondly, if the respondent considered him to be Ethiopian, firstly, this matter had to be a question of *de jure* investigation as to whether the Ethiopians would accept him as such and whether he was, in law, Ethiopian. In that assessment, the First-tier Tribunal had to take into account that the burden as to whether the appellant was *de jure* Ethiopian passed to the respondent. Under this second ground, also, the appellant maintained that even if he was found to be *de jure* Ethiopian, as the respondent maintained, his case had always been that he was an ethnic Tigrinyan. There had therefore been an obligation on the First-tier Tribunal to make a finding on his ethnicity and, if he was an ethnic Tigrinyan from Ethiopia, whether he was at risk in Ethiopia. Events in Ethiopia occurring after he made his claim for asylum showed violence on ethnic lines, particularly affecting those of Tigrinyan ethnicity. which had passed to the respondent was met and, in the event that those matters were satisfied, what risk there was to the appellant as a Tigrinyan ethnic in Ethiopia. The findings at paragraph 24 of the First-tier Tribunal decision were clearly in error in these regards.
6. At the hearing before me Mr Burrett explained that in the First-tier, by the time of the hearing before Judge Parkes, the respondent had accepted that there was a question regarding whether the appellant was Ethiopian in law and whether, in the event that he was, as a Tigrinyan ethnic he would face a risk in Ethiopia. The appellant relied, for example, on a document produced by Amnesty International dated 12 November 2021 which stated:

"Security forces in the Ethiopian capital, Addis Ababa, have targeted Tigrayans, including children and the elderly, with arbitrary arrests and mass detentions as part of an escalating crackdown, Amnesty International said today. Most detainees are being held without charge or access to a lawyer."

The appellant also relied on a document from the Office of the United Nations High Commissioner for Human Rights dated 16 November 2021 which detailed the arrests of people of Tigrinyan origin, up to 1,000 individuals were believed to have been detained in the week prior to the report.

7. I found that there was merit in both of the appellant's grounds. When finding that the appellant was not Eritrean, the First-tier Tribunal set out in paragraphs 15 to 21 adverse aspects of the appellant's case, many of them set out in the respondent's refusal letter. The judge was entitled to place adverse weight on those matters. What the decision does not show at all, however, is that there were a number of other aspects of the appellant's evidence, potentially material ones, set out in the respondent's refusal letter which fell to be weighed on the appellant's side when assessing whether he had shown that he was Eritrean. For example, the appellant sang the Eritrean national anthem correctly and in Tigrinyan in his asylum interview at questions 79 to 81. The appellant also demonstrated a knowledge of the Tigrinyan language in his interview, for example at question 63. He described the Eritrean flag and significance of the colours in the flag correctly, he named regions of Eritrea, he named national food, holidays and the symbol of the country and identified geographical features in his area, albeit not all of these were identified as correct by the respondent. It is not that the judge had to find that those matters showed that the appellant was Eritrean they were potentially material factors which were not referred to at all in the assessment of nationality. I was satisfied that the assessment of Eritrean nationality disclosed an error on a point of law and that it should be set aside to be remade.
8. I also accept that the decision does not show that the First-tier Tribunal made an assessment of whether the appellant could be found to be Ethiopian and whether he was of Tigrinyan ethnicity. As before, it is not in dispute that the appellant has always maintained that he is of Tigrinyan ethnicity. The country evidence was such that if the appellant, after proper assessment, was found to be Ethiopian and Tigrinyan, that profile meant that a more detailed assessment of risk on return had to be conducted than was shown in the decision here.
9. For these reasons, therefore, I found an error of law in the decision of the First-tier Tribunal such that it has to be set aside to be remade. The errors of law go to the material assessments that had to be made in this appeal on whether the appellant is Eritrean or Ethiopian and whether he is of Tigrinyan ethnicity and, if Ethiopian, at risk there on that basis. As the core findings have to be remade it is appropriate for this to be done in the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.

The decision will be remade de novo in the First-tier Tribunal.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 2 September 2022