



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

Appeal Number: AA/02916/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 May 2015**

**Decision and Reasons
Promulgated
On 19 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

**ZELLALEM ABRAHAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Stevens, Duncan Lewis Solicitors, Harrow

For the Respondent: Mr Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of either Eritrea or Ethiopia, born on 1 June 1975. He appealed the decision of the respondent dated 12 April 2014 refusing to grant him asylum in the United Kingdom. He presently has limited leave to remain granted until 11 October 2016. His appeal was heard and was allowed by Judge of the First-Tier Tribunal Lawrence on 9 June 2014. The respondent appealed against that decision and an error of law was found in Judge Lawrence's determination such that it fell to be set aside and the appeal reheard. The appeal was reheard before Designated Judge of the First-Tier Tribunal Woodcraft on 30 October 2014 and dismissed on asylum grounds, on humanitarian protection grounds and on human rights

grounds in a determination promulgated on 13 November 2014. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Garratt on 18 December 2014. The permission found one relevant matter which is that the Judge may have overlooked the fact that with the forms submitted to the Ethiopian Embassy there was a letter dated 21 May 2014 which gave additional details about the appellant's life and history in Ethiopia, including his place of birth and that of his parents, details of his schooling and his father's Ethiopian Army service, together with the appellant's address and employment details in that country. The grounds state that in accordance with guidance set out in **ST [2011] UK UT 00252** the determination does not show that the Judge considered this letter which was prepared for the Ethiopian Embassy by the appellant's representatives on 21 May 2014. They state that if the information in this letter had been taken into account the Judge's conclusion might have been different.

2. On 20 February 2015 the appellant appeared before me and I found that there was a material error of law in the First-Tier Tribunal's determination for the reasons stated in the grounds. I prepared a determination to this effect which is on file. I directed a second stage hearing in the Upper Tribunal on the appellant's application to the Ethiopian Embassy, taking into account the letter which was attached to the form, which letter has been stamped by the Ethiopian Embassy. This is the only issue.
3. This is the adjourned hearing.
4. The Presenting Officer reminded me that there had been an asylum hearing for this appellant in 2004 which was dismissed. He handed me the SEF and witness statement which were produced for that hearing.
5. The appellant took the stand and asked that his two statements which are in the appellant's bundle be used as evidence for the hearing. I also had the form which was handed in to the Ethiopian Embassy by the appellant and the covering letter which was attached to it. Both of these have been stamped by the Head of the Consulate on 22 May 2014.
6. The appellant's representative referred me to the Rule 24 response by the respondent dated 19 January 2015. He asked the appellant what rank his father had in the Ethiopian Army and he said he was a Colonel. It was put to the appellant that the respondent states that he did not tell the Ethiopian Embassy his rank. The appellant said that he did tell the Embassy Secretary about this when he went the first time to the Embassy in 2012 and the second time in 2014.
7. The representative then referred to the completed form which the appellant handed to the Ethiopian Embassy. It was pointed out to him that his full address when he was in Ethiopia had not been put onto that form. He said he had told the Embassy Secretary what his address had been and the secretary told him that it had been demolished and is now a military camp. It had been a camp before but it has changed to another camp now. He said he also mentioned two other addresses to the Embassy Secretary. He said the first one was called Saris and is now occupied by the Red Cross and it had no number or street name. He said the second

address is in the Ledeta area near the Balcha Hospital and he was asked why he did not give a full address for this. He said it is known by the area which is called Ledeta and is near that church.

8. The Presenting Officer cross-examined the witness asking about the form which was handed to the Ethiopian Embassy completed by the appellant. The appellant said he had completed it himself. He was asked why he had only put his first name on the form and he said he put that when he was asked to write his name. He was asked why he had not put his father's full name or his grandfather's full name on the form, and he said the Embassy official had said it was not necessary. He asked the appellant about his address in Ledeta and why there was not a full address on the form and he said the Embassy official had said it was not necessary. He said the first army camp built there was demolished. It was put to him that that is what he had said about the first address but what he is being asked about now is the address in Ledeta. The appellant said the Embassy official had said it was not necessary to put this in.
9. The Presenting Officer then questioned him about the letter which he handed in with the form. His father's rank in the Army has not been mentioned. The appellant said he had told the official his father was a colonel in the Army but the official had said that as he is not still a colonel in the Army he did not need to put this in the letter or the form.
10. The appellant was referred to his witness statement at page 6 of the appellant's bundle in which he explains what happened on the second occasion he went to the Ethiopian Embassy in 2014. He was asked if it was on the second occasion that he had been told by the Embassy official that he did not need to put his father's rank in the Ethiopian Army into the form or the letter. He said it was on the second occasion as on the first occasion the Embassy official had made things difficult for him. It was put to him that at paragraph 20 of his statement he said he went to the Embassy and told them that he wanted to apply for Ethiopian documentation and handed them the letter written by the solicitor. He said the Embassy official had read the letter and had asked him if he had any other documents to show his ID. He said he had not and the official had given him an application form which he had filled in and given to the official, with a photograph. It was put to him that in his statement he has made no mention of him asking questions about what was required in the form, for example his father's address and his rank in the Army and he was asked why he had not mentioned this in his statement. He said he had not thought it was necessary. He was asked if he had been at the Embassy on his own and he said his sister and a friend had gone with him. He was asked if his sister had seen him complete the form and he said yes but he had completed the form himself, she had not helped him. He was asked if the Embassy official had asked his sister any questions but he said he had not.
11. The appellant was referred to his statement at paragraph 1 which refers to him being born in Addis Ababa. In his statement he states that both of his parents are of Eritrean origin but it was put to him that in 2004, at the asylum appeal hearing, he made a statement in which he said he was an

Ethiopian national and he was asked why he had said that. He said that before the war he had lived in Ethiopia. He was asked why he now states that he is no longer Ethiopian and he said because he has been told by the Ethiopian Embassy that he is not Ethiopian. It was put to him that in 2004 in his statement he had said his father was Ethiopian and his mother Eritrean and he also said this in his SEF. The appellant said that he is half Ethiopian on his father's side. He was asked why he had said in his most recent statement that both his parents were Eritrean and he said that originally Ethiopia and Eritrea were all one country but now he has been told he is not Ethiopian and he has accepted that.

12. It was put to the appellant that the reason he has been unable to get a document from the Ethiopian Embassy is because he has not substantiated his nationality with supporting documents. It was put to him that the letter he handed to the Embassy does not state that his father was a colonel, does not have addresses on it, the only name and address is his sister's in the United Kingdom. The full names of his father and grandfather are not on the form and their residential addresses are not on the form. It was put to the appellant that he is not trying to get Ethiopian citizenship. The appellant said he left Ethiopia because he had to as he was told he was Eritrean. He said the Home Office had asked him for evidence that he is an Ethiopian national but he had had to leave Ethiopia because he was found to be Eritrean. He said he had escaped when the Ethiopian government was deporting all the Eritreans.
13. There was no re-examination.
14. A second witness took the stand being the appellant's sister Sara Abraham. She asked that her statement, which is in the appellant's bundle, be used as evidence for the hearing.
15. The Presenting Officer cross-examined this witness. At paragraph 11 of her statement she states that she went with the appellant when he went to the Ethiopian Embassy to apply for Ethiopian documents to confirm his nationality and she was asked if that is the only time she went to the Ethiopian Embassy. She said that was the second time, she had also gone with the appellant when he first went to the Ethiopian Embassy. She was unable to remember what date that was. The second visit was in 2014. She was asked what had happened the first time and she said the Embassy official had spoken to her and the appellant together and he gave them nothing and was quite nasty to them. She was asked what had happened the second time and she said the second time the official was more approachable and he spoke to her. She said that she had stayed in the reception area and she had not seen the appellant filling in the form. She said he had gone inside with the Embassy official and she had stayed outside. She said the official had not allowed her to go in.
16. The witness was asked if she is now British and she said she is. She said she is a refugee. It was put to her that the letter handed by the appellant to the Ethiopian Embassy mentions her and she was asked if she has ever considered writing a letter to support her brother to help him obtain Ethiopian nationality. She said she has not.

17. There was no re-examination.
18. The Presenting Officer made his submissions referring me to the Country Guidance case of ***ST Ethiopia [2011] UKUT 252***. He referred to the findings in this case at paragraphs 128 and 129 submitting that they mirror the head note of the case. I was therefore referred to the head note under the heading "Law" at (B) and (C). He submitted that the situation in that case is the same as in the appellant's case and what has to be considered is whether the appellant has been lawfully or unlawfully deprived of the nationality of a particular state, in this case Ethiopia, and that this has to be decided when the appellant's entitlement to international protection is dealt with.
19. I was then referred to that case under the heading "Country Guidance", in particular sections (4) and (5). At section (4) it is stated "Each claimant must demonstrate that he has done all that could be reasonably expected to facilitate return as a national of Ethiopia". The Presenting Officer submitted that the appellant has not complied with this.
20. With regard to section (5), this states "Judicial fact finders will expect a person asserting arbitrary deprivation of Ethiopian nationality to approach the Embassy in London with all documentation emanating from Ethiopia that the person may have, relevant to establishing nationality, including ID card, address, place of birth, identity and place of birth of parents, identity and whereabouts of any relatives in Ethiopia and details of the person's schooling in Ethiopia. Failing production of Ethiopian documentation in respect of such matters the person should put in writing all relevant details to be handed to the Embassy". The Presenting Officer submitted that when that is considered the appellant has not complied with its terms in the form and the letter presented to the Ethiopian Embassy. He submitted that there is not sufficient detail in the appellant's form and letter. His father was a colonel in the Army in the war and he submitted that this could help clear up the appellant's nationality. None of the addresses were put into the form and he submitted that there was no reason for this, in particular the address in the Ledeta area which is actually in his SEF in full. There is no additional information given about the appellant's sister who lives with him in the United Kingdom and he submitted that she has given no visible support to the appellant which might help him to clarify his Ethiopian nationality. He submitted that she is clearly not afraid to do this as she went to the Ethiopian Embassy with him on both occasions.
21. The Presenting Officer submitted that this appellant had no intention of getting Ethiopian nationality. He has filled in the minimum in the boxes on the form. The Presenting Officer submitted that he has not done all he could reasonably be expected to do in submitting these documents. Not only did he not put addresses onto the form, he only gave first names for himself, his father and his grandfather.
22. The appellant has said that he gave information orally and that his sister saw him complete the form, but there is no suggestion in his statement or anywhere on file that he asked any questions or received any advice from

the Embassy official. He submitted that his evidence about what the Embassy official said to him when he asked about inserting addresses is not credible. He submitted that there is no demonstrable evidence that the appellant had gone through all the reasonable steps required to establish his Ethiopian nationality. He submitted that if indeed the appellant did ask the Embassy official questions and the official gave him answers, this would have been put into his statement. He submitted that although the appellant states that his sister was with him when he completed the form, his sister states that she was asked to wait outside.

23. The Presenting Officer submitted that the appellant is now stating that he is Eritrean. In the letter presented to the Embassy the appellant has not claimed to be Ethiopian. He submitted that the form and the letter do not stand up to anxious scrutiny. He submitted that the letter pays lip service to the requirements in the case of **ST** and based on what is before me the appellant cannot show that he has been deprived of his Ethiopian nationality.
24. The Presenting Officer submitted that there is no documentary evidence to show that the appellant is Ethiopian but that is different from him being deprived of his nationality. He submitted that the application is an empty application and I was asked to dismiss the appeal.
25. The Presenting Officer submitted that the appellant has discretionary leave until October 2016 so there are no human rights issues in this case.
26. The appellant's representative made his submissions relying on the skeleton argument which is on file. The representative submitted that the appellant has provided information in every box on the form and that is what is required in terms of the Country Guidance case of **ST**. He submitted that he also submitted a letter which has clearly been seen by the Ethiopian Embassy official and I was asked to find that he asked questions about how to complete the boxes on the form and was told that much of the information he could have given was not necessary.
27. I was referred to the head note of **ST** under the heading "Country Guidance" number (5) and the representative submitted that the appellant has complied with the requirements. He has given three addresses and stated that Ledeta is near the hospital. He has given his place of birth as Addis Ababa. He has given both his parents names and where they were born and when they died. He has no relatives in Ethiopia and he has given his sister's and brothers' names. He has told the Embassy what his jobs were in the Red Cross shelter in Ethiopia and has told the Embassy that his father was in the Army. I was asked to find that the appellant was told that he did not require to put his father's rank in to the form and the appellant's evidence is that he asked this and that was the answer he was given.
28. The representative submitted that when the appellant's father fought in the Ethiopian Army it was under the communist regime which has now been overthrown. He submitted that there is a new government, the Tigrayan Liberation Front, and he submitted that the appellant's father's

rank in the Army is not relevant as this relates to his position under the previous regime.

29. The representative referred to the appellant's sister being born in Ethiopia but only being three years old when she left to go to Eritrea and she has not been back since. He submitted that his sister went to Sudan with the appellant and her mother and became separated from her brothers when they went back to Ethiopia. He submitted that there would be no reason for her to contact the Ethiopian Embassy. She is a refugee in the United Kingdom and was found to be Eritrean.
30. The representative submitted that the appellant has supplied all the required details and the Embassy has stamped both the letter and the form. On the letter, the Head of the Consulate refers to further questions asked to the applicant in relation to his family background, which makes it clear that the appellant has been telling the truth when he referred to the questions he asked and the answers he received. He submitted that the appellant has been refused Ethiopian nationality on two occasions and that is a deprivation of his nationality.
31. I was referred to the 2004 determination and it was submitted that everything said by the appellant was accepted by the Tribunal except his nationality. He submitted that the situation in 2004 was very different to what it is now and the appellant has complied with the requirements of the Country Guidance case law of **ST**. He submitted that the appellant has explained why he first stated he was Ethiopian but now states that he is Eritrean.
32. I was referred to the appellant's SEF in which he states that his father was Ethiopian and his mother Eritrean, but it was submitted that when they were born it was all one country called Ethiopia. I was asked to find the appellant's evidence to be consistent.
33. The representative referred me to paragraphs 42 and 43 in the case of **ST**. These refer to people being forced to leave Ethiopia because of persecution and he submitted that this was the appellant's situation. He submitted that because of the lack of evidence of the appellant's nationality he is suffering ongoing deprivation of his Ethiopian nationality. He originally thought he was Ethiopian, was sent away from Ethiopia, and has again been rebuffed by the Ethiopian Embassy. He submitted that there is ongoing persecution in this case because of the deprivation of his nationality. I was referred to paragraph 80 of the case of **ST** which states "The person who is found to have suffered arbitrary deprivation of citizenship may find it relatively easy to show that present bureaucratic problems are in reality part of a continuing pattern of hostility towards that person and that the deprivation of nationality for Convention reasons is thus ongoing." The representative submitted that that is the case here. The appellant was persecuted because of his race and is still being persecuted because of his race. The appellant therefore has no choice but to claim his nationality as Eritrean.
34. I was again referred to the letter which was handed to the Ethiopian Embassy. The representative submitted that this is an appellant who

cannot return to Eritrea as he will be persecuted there as he will be seen as being Ethiopian because his father fought for the Ethiopian Army. I was asked to note that his language is Amharic which is an Ethiopian language, and I was asked to consider the background evidence on Eritrea and the risk he will be at if he goes back there.

35. I was asked to allow the appeal.

Determination and Reasons

36. The burden of proof is on the appellant. The appeal is taken under Section 82(1) of the Nationality, Immigration & Asylum Act 2002. The available grounds are specified in Section 84(1).
37. The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 apply. A refugee means a person who falls within Article 1A of the Geneva Convention.
38. The appellant has to show under the Geneva Convention a real risk on return of persecution because of race, religion, nationality, membership of a particular social group or political opinion.
39. If the appellant does not qualify as a refugee it has to be considered whether he is eligible for humanitarian protection as defined in the Immigration Rules at paragraph 339C. The same low standard of proof applies. The appellant has to show substantial grounds for believing that if returned he would face a real risk of suffering serious harm.
40. Apart from refugee or humanitarian protection status it has to be considered whether the appellant is otherwise protected from removal under the European Convention on Human Rights. Article 3 is subsumed into the humanitarian protection issue. Reliance on other Articles demands presentation of a very strong case. Article 8 protects the right to private and family life but is subject to the proportionate requirements of immigration control. An Article 8 case can succeed only if the facts are such that the imperative of proportionality demands such an outcome notwithstanding that the case could not succeed under the Immigration Rules.
41. This appellant's asylum claim failed in 2004 and again in 2014. For the appeal to succeed I have to find that the appellant can demonstrate that he has been deprived of Ethiopian nationality. If he cannot do this, he has to show a prospective risk. I find that he has been unable to do that.
42. If I find the appellant to be Eritrean, he cannot be returned to Eritrea as this would potentially expose him to a significant risk of ill treatment. That has been accepted by the respondent. It was accepted by the adjudicator in 2004 that he was expelled from Eritrea because the Eritrean authorities thought him to be Ethiopian. I therefore have to decide whether he would be at risk on return to Ethiopia and whether he has been deprived of Ethiopian nationality. The 2004 determination is my starting point.
43. Since that determination I have now to consider the said Country Guidance case of **ST**. Based on the evidence before me this appellant was not

arbitrarily expelled to Eritrea. I find therefore that he was not subject to the process of deprivation of citizenship at that point.

44. The Ethiopian authorities will not allow him to return as a foreigner and so the appellant approached the Ethiopian Embassy in London with his documentation, asking for Ethiopian nationality. The Secretary of State finds that he has not given all the evidence he could have to the Ethiopian Embassy and that is why it has rejected his application.
45. I have noted the form which he handed to the Embassy and I have noted the letter from his solicitor, Duncan Lewis, dated 21 May 2014 which was attached to that form, both of which have been stamped by the Embassy.
46. The head note under "Country Guidance" at number (4) of **ST, (which quotes the findings at paragraphs 128 and 129 of that case)** states that an appellant must demonstrate that he has done all that could be reasonably expected to facilitate return as a national of Ethiopia. At number (5) under the same heading it is stated that if the appellant cannot produce documentation establishing his nationality and his identity, he has to put in writing all the relevant details and hand this to the Embassy. I have noted the letter sent by his solicitor to the Embassy. Although this letter mentions his father serving in the Ethiopian Army, the letter does not state that his father was a colonel. The appellant said that he asked the Embassy official if his father's rank had to be put on to the form and he was told that was not necessary. The letter had already been prepared by his solicitor and his father's rank was not mentioned therein. I find that there is a lack of credibility in the appellant's oral evidence about asking the Embassy official for advice and being told that much of the information he could have entered on the form was not required. The appellant states his sister saw him filling in the form but she denies this and states that she was in a different room. He has given his father's and grandfather's name and his own name as Abraham. No full names are entered on this form. He has left blanks for their addresses. The reasons given by the appellant for not entering these addresses are not credible. Additional pieces of information could have been given to the Embassy eg where he stayed, in particular the address in Ledeta which is actually on his SEF. On the form the Embassy has stated the appellant has not attached supportive documents with his application for an Ethiopian passport, therefore there is no valid reason for the Embassy to issue him with an Ethiopian passport. Although he has given his father's and mother's names and his sister's name in the letter, no addresses have been given for them. For the appellant's representative to state that because his father fought for a different regime in the Ethiopian Army, he did not need to mention his father's rank is not credible. I find that he should have completed the form to show his addresses in Ethiopia, in particular the one in Ledeta and the address of the Army camp even if it no longer exists as this could be checked by the Ethiopian authorities. He omitted his, his father's and his grandfather's addresses, and their full names, in particular his grandfather's address which was where he was living when the deportations took place, and where he remained to nurse his mother. This is a significant omission.

47. The appellant's sister said she went to the Embassy with the appellant in 2012 and 2014. He appears to have seen two different people at these meetings. If he asked questions on the first occasion, the second official would not have known this and so he would have had to ask the same questions to him. I do not find it credible that he asked questions about important information and was told it was not required. I find that he has deliberately left out key pieces of information in the letter and on the form. Based on what he has given the Embassy I am not surprised that he was not granted Ethiopian nationality.
48. The burden of proof of establishing that the appellant was deprived of Ethiopian citizenship rests on the appellant. He has not discharged that burden to the appropriate standard. He has failed to cooperate with the Ethiopian authorities in the documentation process. He should have made a genuine effort to substantiate his asylum claim.
49. Because of this I find that the appellant cannot demonstrate that he has been deprived of Ethiopian nationality. He was found to be Ethiopian in the appeal in 2004.
50. The appellant's representative has referred to past persecution resulting in future persecution but this appellant has not shown a prospective risk on return. The appellant's representative has stated that the appellant is suffering ongoing persecution as he has been refused Ethiopian nationality over a number of years but I find that if he had cooperated with the Ethiopian Embassy as required by the Country Guidance case, the Ethiopian Embassy might well have granted him nationality.
51. There is nothing to suggest that this appellant would be entitled to humanitarian protection if he is returned to Ethiopia.
52. Articles 2 and 3 of ECHR stand or fall with the asylum claim.
53. This appellant has discretionary leave in the United Kingdom until October 2016. I am therefore not considering Article 8 of ECHR.
54. I dismiss the appeal on asylum grounds.
55. I dismiss the appeal on humanitarian protection grounds.
56. No anonymity direction is made.

Signed

Date

Judge Murray
Deputy Judge of the Upper Tribunal