



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

Appeal Number: AA/06984/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17th February 2015**

**Decision & Reasons
Promulgated
On 24th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**N H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Miss J Isherwood

DECISION AND REASONS

1. The appellant's appeal against a decision to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge P-J S White ("the judge") in a decision promulgated on 12th December 2014. The appellant claimed to be at risk on return to Eritrea in consequence of his religious faith as a Pentecostal Christian. The judge concluded that the appellant's

core claims were not made out and found that he would not be at risk on return on asylum grounds or in relation to Articles 2 and 3 of the Human Rights Convention. No Article 8 case was advanced at the hearing by the appellant's counsel.

2. The appellant applied for permission to appeal. He was, by then, unrepresented. In his grounds, he noted that the judge accepted his claim that he had spent the first seventeen months of his life in Eritrea. He stated that it followed that the judge had "indirectly accepted" his forced deportation to Ethiopia. The judge did not properly weigh the evidence given by the appellant's witness, a pastor at a church in Swansea and ought not to have held against the appellant his failure to approach the Eritrean Embassy for evidence of his nationality. Similarly, the judge gave undue weight to the apparent absence of evidence of contact between the appellant and his uncle or cousin. So far as his faith was concerned, the appellant stated in his grounds that he was able to answer many questions about it. He did not claim to be a pastor or an evangelist. The judge ought to have accepted the evidence of the appellant's pastor in this regard.
3. Permission to appeal was granted on 13th January 2015, on the basis that it was arguable that the judge failed to take into account or give due weight to his acceptance of the fact that the appellant was born in Eritrea and lived there for seventeen months, and lived there again between February 2000 and December 2002. The judge's finding that the appellant had not shown that he was an Eritrean national was arguably in conflict with the earlier findings.
4. In a rule 24 response from the Secretary of State, the appeal was opposed. The judge directed himself appropriately. His findings regarding nationality and other matters were open to him and he was entitled to conclude that the appellant's core account was not credible.

Submissions on Error of Law

5. There was no appearance by or on behalf of the appellant. Enquiries made through my usher revealed that no messages had been left with the Tribunal. The address given by the appellant in his application for permission to appeal was the same as the address relied upon earlier in the proceedings and the Upper Tribunal sent out notice of the hearing on 21st January 2015 to that address, by first class post. There was nothing to show any failure of service. I took into account rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the appellant had been notified of the hearing and considered that it was in the interests of justice to proceed in his absence. Further delay would be of no benefit to either party and the appellant, having identified the basis on which he contended that the judge had erred in law, had been given sufficient time to prepare his case.

6. Miss Isherwood said that the judge had not erred in law materially or at all. The appellant was represented by counsel at the First-tier Tribunal hearing. His grounds in support of the application amounted to a disagreement with the judge's findings.
7. The decision was a detailed one and the judge included a careful summary of the evidence. It was clear that the Secretary of State had not accepted the appellant's case. The judge, in contrast, accepted part of it, including the appellant's claim that he had resided in Eritrea for a period of time. However, the judge gave cogent reasons for concluding, overall, that the appellant had not shown that he would be at risk on return as a Pentecostal Christian.
8. The judge properly took into account salient features of the case, including the absence of an approach by the appellant to the Eritrean authorities, for evidence regarding nationality, and the appellant's evidence that he had heard about National Service in Eritrea, although this was apparently not a feature of his claim to be at risk on return.
9. In his grounds, the appellant contended that the judge was not independent but the decision showed that he had acted properly in his judicial role throughout. Paragraphs 8, 29 and 30 showed that the judge accepted that the appellant had lived in Eritrea for the first seventeen months of his life and then again between 2000 and 2002. For most of his childhood, the appellant was in Ethiopia. In this context, the judge was entitled to find that if the appellant had lived in Eritrea for a period and then spent years out of the country in Ethiopia, he would, nonetheless, have been aware of National Service and the onerous obligations falling on Eritrean citizens in this regard. The judge's reasoning was clear throughout. He accepted some of what the pastor had said. The appellant's case was carefully summarised. Although the pastor believed the appellant's claims, the judge properly reached his own conclusion. The balanced nature of his assessment is also shown by his finding that parts of the Secretary of State's case should not be given much weight, including the appellant's failure to claim asylum before arrival in the United Kingdom. The judge looked at everything in the round.

Conclusion on Error of Law

10. The decision is extremely thorough and has been carefully prepared by an experienced judge. As Miss Isherwood submitted, he carefully set out in summary form the evidence before him. He accepted parts of the appellant's case and concluded that parts of the respondent's case should be given little weight, including the appellant's failure to claim asylum earlier. There can be no doubt that the judge had all the salient features clearly in mind throughout.
11. The judge was entitled to give adverse weight to the appellant's failure to approach the Eritrean authorities here, for evidence of his nationality. He recorded the evidence in this context at paragraph 21 and his assessment

appears at paragraph 36 of the decision. So far as National Service in Eritrea is concerned, his summary of the appellant's evidence appears at paragraph 22 and his assessment at paragraph 32 of the decision. The judge was entitled to find that the absence of a claim to be at risk as a draft evader was a surprising omission in the asylum claim and was entitled to take this aspect into account as an adverse factor in the overall assessment.

12. So far as the appellant's core claim to be at risk as a Pentecostal Christian is concerned, the decision contains a very thorough assessment indeed, at paragraphs 41 to 47 and there is also a careful assessment of the issue of illegal exit from Eritrea, at paragraphs 39 and 40, as there is of the appellant's account of his escape, at paragraph 49.
13. The judge's overall conclusions that the appellant had not shown, to the applicable standard, that he is an Eritrean national or a Pentecostal Christian, or that he left Eritrea illegally, were open to him in the light of the evidence. The parties were represented by very experienced advocates and the decision shows that the cases were well put. The judge weighed the evidence carefully, took into account the submissions made on behalf of the parties and made sustainable findings. I accept Miss Isherwood's submission that the grounds amount to a disagreement with the outcome. The appellant has failed to identify an error of law in the decision. The decision of the First-tier Tribunal shall stand.

DECISION

The decision of the First-tier Tribunal, containing no error of law, shall stand.

ANONYMITY

The judge made an anonymity direction and I maintain it. The direction shall apply to both parties until or unless varied by another court or tribunal.

Signed

Dated

Deputy Upper Tribunal Judge R C Campbell