



IAC-HW-AM-V1

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

Appeal Number: AA/04277/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 December 2015**

**Decision & Reasons Promulgated
On 5 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AYM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Staunton of the Specialist Appeals

For the Respondent: Mr I Palmer of Counsel instructed by Barnes, Harrild & Dyer, solicitors

ERROR OF LAW DECISION AND REASONS

**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 her or any member of her 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.

The Respondent

1. The Respondent (the Applicant) is a national of Eritrea born in 1985. On 3 April 2006 he applied for entry clearance to visit his mother who had been recognised as a refugee and in December 2005 had become a naturalised British citizen. That application was refused and the Applicant's appeal was dismissed by a determination promulgated on 12 December 2006, to be found at pages 80-85 of the Applicant's bundle.
2. In August 2007 the Applicant left Ethiopia overland and on 11 June 2008 arrived clandestinely in the United Kingdom. He claimed asylum the next day on account of his fear on return to Eritrea of persecution for his political opinions.
3. The Appellant (the SSHD) considered the Applicant had absconded between 26 June 2008 and 7 August 2011. On 8 May 2012 the SSHD interviewed him. The SSHD made no decision on the claim and the Applicant issued proceedings for judicial review which were compromised on 4 November 2014 on the basis that the SSHD would make a decision on the Applicant's claim within 21 days of the sealing of the Consent Order which happened on 15 December 2014.
4. It was not until 4 March 2015 that the SSHD decided to refuse the Applicant leave to enter and to remove him to Eritrea. The reasons for the decision were contained in a letter of 17 February 2015 (the reasons letter). The SSHD noted the Applicant's claim to have worked in the Information and Culture Unit of the Eritrean Armed Forces and did not believe the substance of his account.

The First-tier Tribunal Proceedings

5. On 13 March 2015 the Applicant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds of appeal summarise the Applicant's account but otherwise are entirely formulaic and generic. They include references to Articles 2, 3 and 8 of the European Convention. The grounds make no specific reference to the basis for the Applicant's claim under Article 8.
6. By a decision promulgated on 24 August 2015 Judge of the First-tier Tribunal Andonian allowed the Applicant's appeal on refugee grounds.
7. On 14 September 2014 Judge of the First-tier Tribunal Reid granted the SSHD permission to appeal because it was arguable the Judge had not made adequate findings on the Applicant's account and had not explained how he had assessed the Applicant's credibility and had made no reference to the country guidance determinations of *MA (draft evaders - illegal departures - risk) Eritrea CG [2007] UKAIT 00059* and *MO (illegal*

exit - risk on return) Eritrea CG [2011] UKUT 00190 (IAC) upon which the SSHD had expressly relied in the reasons letter.

The Upper Tribunal Hearing

8. The Applicant filed a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. He submitted that the findings of the Judge that the Applicant had illegally left Eritrea were sustainable on the facts and without express reference to the country guidance cases. Further in 2003 his mother had been recognised as a refugee and indeed the Applicant had left Eritrea for a UNHCR refugee camp in Ethiopia from where he had applied for entry clearance. The relationship between the Applicant and his mother had not been challenged at any time during the entry clearance application and the appeal from the decision to refuse it. The findings to that effect in the 2006 determination meant the point should not be re-litigated on the basis of the jurisprudence in *Devaseelan (second appeals, ECHR, extra-territorial effect) [2002] UKIAT 00702*.
9. A consideration of the determinations in *MA* and *MO* would not have made any difference to the Judge's findings on the Applicant's illegal exit from Eritrea.
10. On the issue of the credibility findings, the PR24 response argued that the facts of the Applicant's illegal exit and his being of draft age and that he would be returning as a failed asylum seeker even with no history of political activity in the United Kingdom were in themselves sufficient to establish that he is a refugee.
11. The Applicant was present with two female and one male supporters. Mr Palmer confirmed he had explained the purpose of the hearing and the likely procedure which would be adopted.
12. I raised as an initial matter the issue of the DVD referred to in the SSHD's reasons letter but which the Applicant stated had in fact been submitted: see paragraph 32 of his statement of 8 June 2015. Mr Staunton noted there was no DVD held by the Presenting Officer at the First-tier Tribunal hearing. Mr Palmer explained the purpose of the DVD was to show the applicant was a playwright. It was not suggested that the content of the DVD was of a political nature. I advanced the view that I did not think the Judge's decision reflected the purpose of the DVD as explained by Mr Palmer. Mr Palmer said his belief was that the content and hence the relevance of the DVD had been mis-understood by the Applicant's advocate.

Submissions for the SSHD

13. Mr Staunton relied on the two grounds described in the application for permission to appeal. The Judge had not engaged with the detail of the Applicant's case and its specifics.

14. The Judge had given undue weight to the issue of illegal exit. He had referred to the SSHD's Country of Origin Information Report of May 2015 but in the context of illegal exit, the Applicant claimed he had left Eritrea in 2004 and the situation in 2015 was considerably different from 2004. It was accepted the determination in *MO* dealt with the question of exit after 2006 which was considerably closer to 2004 than the basis on which the COR had been prepared. In any event, the Judge had failed to give any reason why he had accepted the Applicant's claim to have illegally left Eritrea.
15. The reasons letter had identified and extensively canvassed several credibility issues. The Judge had failed directly to address any of these. He had not given sufficient reasoning in his decision for the SSHD as the disappointed party to know why the Judge had found the Applicant credible. The decision contained errors of law and should be set aside and the appeal remitted to the First-tier Tribunal for hearing afresh.

Submissions for the Applicant

16. Mr Palmer relied on his R24 response. The principles in *Devaseelan* should apply to the findings made in the entry clearance determination of 12 December 2006; in particular the acceptance of the relationship of the Applicant and his mother and his illegal departure from Eritrea for a refugee camp in Ethiopia should be accepted. If the SSHD wished to proceed on the basis the Applicant had legally left Eritrea in 2004 it was necessary for the SSHD to do more than rely on the determination in *MO*.
17. The Judge's failure to address all the issues raised in the reasons letter was not in itself a material error of law. The facts of the Applicant's case spoke for themselves and the Judge's decision was sustainable.

Findings and Consideration

18. Failure to address every point raised in a reasons letter issued by the SSHD is in itself not a material error of law. However, in this case it is doubtful whether the Judge has addressed any of the specific issues raised by the SSHD and it would appear he has treated the appeal on a generalised basis. He referred generically to country information of May 2015. It would appear that this is the SSHD's own document but the Judge did not identify it. More importantly, he has not taken account of the fact that the Applicant's claim is to have illegally left Eritrea as long ago as 2004. In assessing that claim, it would be necessary to look to country information at or around that time rather than the latest and very recent information. The position in Eritrea as indeed it would in any State have moved on in the intervening period of more than a decade. Finally, I am satisfied that when the SSHD considers the Judge's decision she will not be able to understand why in the light of the points raised in the reasons letter the appeal has been allowed. This in itself is a material error of law. Justice must not only be done but must be seen to be done.

19. For these reasons, I find the decision of the First-tier Tribunal contained material errors of law such that it should be set aside in its entirety.
20. Having regard to the nature and extent of the fact-finding which will be required at any re-hearing, s.12(2) Tribunal's Courts and Enforcement Act 2007 and Practice Statement 7.2(b), I conclude the matter should be remitted to the First-tier Tribunal for hearing afresh.

Anonymity

21. An anonymity direction has already been made. It was not addressed at the hearing before me and in the circumstances I direct its continuation.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained an error of law and is set aside. The appeal is remitted for hearing afresh by the First-tier Tribunal.

Signed/Official Crest

Date 23. xii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal