Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/10415/2014**

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision and Reasons Promulgated**
On 7th January 2016	**On 8th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SURAFEL KIDANE

Respondent

Representation:
For the appellant: Ms E Savage, Home Office Presenting Officer
For the respondent: Mr S Sellwood, instructed by Duncan Lewis Solicitors

DECISION AND REASONS

1. Although this is appeal by the Secretary of State I refer to the parties as they were before the First-tier Tribunal.

2. The appellant, who claims to be a national of Eritrea, appealed to the First-tier Tribunal against a decision by the respondent of 17 November 2014 to refuse his application for asylum. Judge of the First-tier Tribunal Fletcher-Hill allowed the appeal. The Secretary of State now appeals with permission to this Tribunal.

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3. In summary the background to this appeal is that the appellant came to the UK on 19 December 2013 and claimed asylum that day. He claims that he is at risk on return to Eritrea because he is a Pentecostal Christian. He claims that he was arrested in March 2007 and detained for one month and released after his uncle paid a bribe. He claims that he went to Sudan and Libya and that in December 2013 he travelled to the UK spending 18 days in France en route. The respondent refused the application saying in the reasons for refusal letter that she did not accept that the appellant is an Eritrean national or that he is a Pentecostal Christian, or that he was arrested and detained in March 2007. The Secretary of State identified a number of inconsistencies and discrepancies in the appellant's account.

4. In her grounds of appeal to the Upper Tribunal the Secretary of State complains of three errors of law in the First-tier Tribunal Judge’s decision. It is contended that the Judge failed to give any or adequate reasons for her conclusion that the appellant is Eritrean and a Pentecostal Christian; that the Judge failed to take into account and/or resolve conflicts material to the outcome of the appeal, for example the discrepancies between the appellant's screening interview and substantive interview and his claimed birth certificate; and the Judge failed to give any or adequate reasons for allowing the appeal under Article 8 of the European Convention on Human Rights.

5. The first and second grounds are interlinked and I consider them together. The First-tier Tribunal Judge heard oral evidence from the appellant and submissions from representatives on behalf of the Secretary of State and the appellant and set those out ion the decision. The Judge made her findings in relation to the asylum claim at paragraphs 7.1-7.5 of the decision. The Judge accepted that the appellant had satisfactorily explained his failure to claim asylum in France and went on to consider the substantive asylum claim at paragraphs 7.4 and 7.5 as follows;

> “7.4 I have carefully considered all of the evidence both written and oral and I find the appellant's account of his Pentecostal faith to be credible. I find that he was cautioned at length and in detail during his substantive asylum interview and I find his account credible and that there is a reasonable degree of likelihood that he is Eritrean as claimed and also that he is a Pentecostal Christian.
>
> 7.5 I accept that the appellant is Eritrean and I accept that he is a Pentecostal Christian and that he left his country illegally after his arrest at a prayer meeting and fled to Sudan”

6. It is clear from these paragraphs that the Judge failed to engage with any of the credibility issues raised in the reasons for refusal letter or by the Presenting Officer in submissions. Further, the Judge failed to give any reasons for accepting the appellant's account in its entirety. It is not enough, as suggested by Mr Sellwood, to read the decision as a whole including the evidence and submissions and to assume that the Judge accepted the appellant's evidence and submissions. I take account of the guidance given by the Court of Appeal in the case of <u>Malaba v SSHD</u> [2006] EWCA Civ 820 where Dyson LJ said;

> "20. In my judgment, the existence of these possibilities underlines the fact that it was imperative for the adjudicator to explain how she reached her main conclusion that, having regard to the response statement, the discrepancies did not completely undermine the core of the claim. It was insufficient simply to say that she had had regard to the response statement. She should have identified the discrepancies which she considered had been satisfactorily explained by the appellant and those which had not, giving short reasons for her findings, and explained why such discrepancies as had not been satisfactorily explained did not completely undermine the appellant's account. I agree with the conclusion of the IAT that the adjudicator did not give adequate reasons for her finding that the appellant was a credible witness, particularly in circumstances where she did not give oral evidence beyond the adoption of her witness statement. Even if it was open to the adjudicator to place any, still less "particular", reliance on the medical report of Dr Pilgrim, her reliance on that report to support her finding that the appellant's account was credible did not absolve her from the duty to provide adequate reasons for her finding in relation to the discrepancies."

7. The Judge in this case had a duty to resolve areas of dispute before her and to give reasons for her findings and in my view she failed to do so. That failure amounts to an error of law.

8. In terms of the third ground of appeal, at paragraph 7.7 the Judge appeared to find that the appellant has not established a private or family life in the UK yet went on at paragraph 9.3 to allow the appeal under Articles 2,3 and 8 of the ECHR. This amounts to a further error as, again, no reasons are given for allowing the appeal under Article 8.

9. In light of the errors identified I set the decision of the First-tier Tribunal aside decision in its entirety.

10. I am satisfied that the appellant has not therefore had his case properly considered by the First-tier Tribunal. The parties were in agreement with my view that the nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed Date: 7th January 2016

A Grimes
Deputy Upper Tribunal Judge