Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/10521/2015**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 5 July 2016	**On 6 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

BINIYAM GOYETOM BEHRE
(NO ANONYMITY DIRECTION)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Hussain of Counsel
For the Respondent: Ms Petersen a Home Office Presenting Officer

DECISION AND REASONS

Background

1. I lift the anonymity direction made on 7 March 2016 as there appears to be no purpose to it.

2. The Respondent refused the Appellant's application for asylum and ancillary protection on 22 July 2015. His appeal against that decision was dismissed by First-tier Tribunal Judge Taylor following a hearing on 7 March 2016. This is an appeal against that decision.

The grant of permission

3. Upper Tribunal Judge Deans granted permission to appeal (20 May 2016) on the ground that it is arguable that it was unfair for the Judge to determine the appeal in the absence of the Appellant.

Respondent's position

4. It was submitted in the rule 24 notice (1 June 2016) that the Appellant had failed to produce any evidence to demonstrate he had not been at the the same address as the Judge's determination was sent to.

Appellant's position

5. The Appellant asserted in his statement (1 May 2016) in essence that the address the Tribunal sent the notice of hearing to was his correspondence address in London. He had asked his previous solicitors in September to notify the Tribunal of the fact he had moved to Bradford. Those solicitors closed down and they would not therefore have received the new hearing date. The person living at his correspondence address did not receive the notice of hearing that brought forward the hearing date.

The Judges findings

6. The Judge found that the Appellant had provided no documentation or information or made any submissions as to why the appeal should be allowed and had chosen not to attend the hearing all of which undermines his credibility.

Discussion

7. The Judge did not summarise the history of the proceedings. The Appellant was originally written to on 24 August 2015 at the address he had given in London where he resided. His solicitor was also written to on that day. They were both notified that the pre hearing review would take place on 12 May 2016 and that the full hearing would take place on 26 May 2016.

8. On 17 December 2015 the Appellant, but not his representative, was written to at the London address saying that the pre hearing review was taking place on 22 February 2016 and the full hearing on 7 March 2016. He was also sent a notice that the hearing fixed for 26 May 2016 had been adjourned. That letter was sent by 2nd class post. On 23 February 2016 he was sent a notice to the London address of what had occurred at the pre hearing review which notes that his address is correct.

9. I am not satisfied that the Judge materially erred in not adjourning the proceedings. The Appellant had a duty to notify the Tribunal of his correct address. He failed to do so. It is unclear to me why the Judge's

decision following the hearing on 7 March 2016 would be received by the Appellant it having been sent to the same address as that to which the notice following the pre-hearing review on 23 November 2016 was sent as was the letter of 17 December 2015. I do not accept it is likely that both of those letters would simply have gone astray but not the actual determination.

10. Separately to this however the Judge has a duty to exercise anxious scrutiny and apply relevant guidance case law. I note from the within the determination that the Judge did not refer to or engage with MO (Illegal Exit – Risk on Return) Eritrea CG [2011] UKUT 00190 (IAC) or background information.

11. MO noted, among other things, that a person of draft age who is accepted as having left Eritrea illegally is reasonably likely to be regarded with serious hostility on return and face a real risk of persecution or serious harm.

12. The Judge failed to note the Respondent's concession within the refusal letter that the Appellant had avoided military service and had illegally exited Eritrea [48]. I pointed this out to the representatives at the commencement of the hearing. It was conceded that Ms Petersen that this was a material error of law and a "Robinson" obvious point.

13. It was noted in the refusal letter that The Danish Immigration Service Fact-Finding Mission in (December 2014) ("the Danish report") said that if a person who left illegally pays a fine of 2% of income tax and signs a letter of apology they will not face harassment or persecution on return. A second source said it was not clear if that included deserters. A Western Embassy noted that refugees have returned without adverse consequences.

14. I pointed out to the representative that I have heard numerous appeals and repeatedly read evidence that noted that the Danish report was criticised in its methodology and conclusions by Human Rights Watch (2 July 15 -HRW). HRW noted the Respondent's report (January 2015) which concluded that "the Eritrean government made no visible progress on key human rights concerns... including in the area of arbitrary and inhumane detention, indefinite national service…". HRW also noted criticism from the UNHCR and 2 researchers involved in the preparation of the Danish report who had the "… clear impression that their superiors were intent on reaching pre-determined conclusions." Criticism from Professor Kibreab (13 May 2015) was in similar terms.

15. Both representatives were aware of this body of evidence and neither sought time to refresh their memory on it, or adjourn the hearing to consider it.

16. The Judge was under a duty to anxiously scrutinise the Appellant's case and apply relevant guidance case law. He failed to do so. This is a material error of law. I set the decision aside.

Remit or rehear

17. Both representatives confirmed that the appropriate way disposing of the case was by re-hearing the matter as no additional evidence was required given the concessions made by the Respondent in the refusal letter.

18. I was satisfied I should rehear the matter in the Upper Tribunal, in accordance with the President's Practice Direction, given the Respondent's concessions, the lack of complexity of the case or need to hear evidence, and to avoid unnecessary delay.

19. The Appellant evaded military service and left Eritrea illegally. He will be returned as a failed asylum seeker without a passport and therefore would require a travel document. It is clear from MO and the background evidence to which I have referred that he would be reasonably likely to face questioning at the airport on arrival as to how and why he left and why he was not performing military service. He should not be expected to lie. I place little weight on the Danish report given the criticisms of it to which I have referred. It is reasonably likely he will be severely ill treated as set out in the background evidence and case law. Accordingly, he is entitled to be recognised as a refugee.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision and allow the Appellant's appeal.

Signed:
Deputy Upper Tribunal Judge Saffer
5 July 2016