



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

Appeal Number: AA/11632/2015

THE IMMIGRATION ACTS

Heard at North Shields

**Decision & Reasons
Promulgated**

On 5 July 2016

On 8 July 2016

Prepared on 6 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**A. K.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, instructed by Halliday Reeves Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Eritrea who claimed asylum upon arrest as one who had entered the UK illegally on 23 March 2015. On 4 August 2015 the Respondent refused the asylum claim, and made a decision to remove him from the UK.
2. The Appellant's appeal against the removal decision was heard on 30 March 2016, and it was dismissed on all grounds, in a decision promulgated on 14 April 2016 by First Tier Tribunal Judge Hands.

3. The Appellant was granted permission to appeal that decision on 9 May 2016 by First Tier Tribunal Judge Page on the basis it was arguable the Judge's approach to the evidence, and the current country guidance decision in MO [2011] UKUT 190 was flawed.
4. Thus the matter comes before me.

Error of Law?

5. Ultimately both parties were agreed that the Judge's approach to the evidence was flawed for lack of adequate reasoning, and that the decision had to be set aside and remade.
6. The Respondent had conceded that the Appellant was not just an Eritrean citizen, but that he had been required to perform military/national service, that he had done so and was not therefore a draft evader, and, that he had left Eritrea illegally. That begged the question of primary fact of whether he had been discharged from his military/national service, or whether he had deserted from it. In turn that begged the secondary question of whether he would as a result be perceived to be a deserter, or one who had been discharged from service upon his return by the Eritrean authorities, and what their attitude would be to him as a result. Put simply both parties were agreed that the Judge had not resolved that question of primary fact, and had not properly addressed the secondary question as a result.
7. To address that question of primary fact the Judge had to address the evidence, which on any view concerned the Appellant's account of his experiences some years in the past, in the light of the guidance to be found in the current country guidance decisions as to the situation that prevailed in Eritrea at that time. The relevance of the Danish FFM report was on any view limited to the analysis of how the Appellant would be perceived now, in the light of the Judge's decision as to whether he had told the truth about those past events. Even then, the parties were entitled to an analysis of why the content of the Danish FFM was to be preferred over the reports relied upon by the Appellant, which together with the current country guidance decisions pointed to a different attitude on the part of the Eritrean authorities. A Judge may of course depart from current country guidance, but the parties are entitled to a reasoned explanation as to why such a step has been taken, particularly in circumstances such as these where different sources, and even the same expert appear to have taken different stances at different times. For example Professor Kibreab's stance when interviewed for the purposes of the Danish FFM report appears to have quite distinct from his subsequent stance. No doubt the position will all be a good deal clearer once the anticipated country guidance decision is published.

Future conduct of the appeal

8. Since both parties were agreed that the decision had to be set aside and remade, the focus of the hearing then turned to the mechanism for doing so. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, as requested by both parties. In the circumstances of the appeal I am satisfied that this is the

correct approach. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. Having reached that conclusion, with the agreement of the parties I make the following directions;

- i) The decision upon the appeal is set aside. The appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Hands.
- ii) A Tigrinyan interpreter is required for the hearing of the appeal.
- iii) The Appellant must inform the Tribunal by 5pm on 19 July 2016 what (if any) further evidence he seeks to rely upon.
- iv) The appeal is to be listed on the first available date at the North Shields hearing centre after the publication of the anticipated country guidance decision for Eritrea.
- v) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

9. The decision promulgated on 14 April 2016 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;
 - i) The decision upon the appeal is set aside. The appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved. The appeal is not to be listed before Judge Hands.
 - ii) A Tigrinyan interpreter is required for the hearing of the appeal.
 - iii) The Appellant must inform the Tribunal by 5pm on 19 July 2016 what (if any) further evidence he seeks to rely upon.
 - iv) The appeal is to be listed on the first available date at the North Shields hearing centre after the publication of the anticipated country guidance decision for Eritrea.
 - v) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 6 July 2016