



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/08370/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision & Reasons**

**On 26 May 2017**

**Promulgated**

**On 31 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**WMM  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss V.Adams, Counsel, instructed by Barnes, Harrild and Dyer, Solicitors.

For the Respondent: Mr.Diwnycz, Home Office Presenting Officer.

**DECISION AND REASONS**

**Introduction**

1. The appellant claimed protection from the respondent. He said he was an Eritrean national born in February 1995 and a member of the Eritrean Liberation Front (ELF). He had spent all his life in Saudi Arabia where his family had relocated. If returned to his country of nationality he faced a real risk of persecution because of his political opinions. He would also be required to undertake national service, the conditions of which would breach his human rights.
2. The respondent refused his claim in May 2015. The respondent accepted his account of being an Eritrean national who had spent his

life in Saudi Arabia. The respondent did not accept that he had been a member of the ERF when living in Saudi Arabia or had he been an active member in the United Kingdom. Regarding national service, as he was not from Eritrea he was not evading service. The country guidance case of MO [2011] UKUT 00190 referred to indefinite military service. However, the respondent referred to up-to-date information as indicating the Eritrean authorities have resorted back to an 18-month time limit for military service.

### The First tier Tribunal

3. His appeal was heard by the First-tier Tribunal Judge Holmes on 25 September 2015 and was dismissed. The judge found he would not be linked to the ELF. As he had never lived in Eritrea he would not be seen as someone who had left illegally. At paragraph 36 of the decision the judge found that he might well be required to perform national service but that it would not breach his article 3 rights. The judge referred to the country guidance case of MO [2011] UKUT 00190 and the subsequent 2014 Danish report on Eritrea. He also referred to the subsequent comments of Prof Kibread criticising the way the information provided was handled. The judge acknowledged the wide-ranging dispute over the reliability of this report and the attendant country information. The judge decided to continue to follow the original guidance given in MO [2011] UKUT 00190 and did not accept that the situation had changed. The judge did not find the appellant would be regarded with hostility by the Eritrean authorities.

### The Upper Tribunal

4. Permission to appeal to the Upper Tribunal was granted on the basis First-tier Tribunal Judge Holmes erred in his conclusion on articles 3 and 4 given the conditions imposed on conscripts and the indefinite length of military service.
5. The appeal was heard by Deputy Upper Tribunal Judge Alis on 15 March 2016. He concluded that there was a material error of law in the judge's assessment of the requirement to undertake military service in Eritrea given the conditions imposed on conscripts and the indeterminate length of service. MO and the earlier decision of MA (Draft evaders -illegal departures -risk) Eritrea CG [2007] UK AIT 00059 were distinguished as the present appeal concerned solely the requirement to undertake service and not evasion. The judge adjourned for further submissions on this issue.

### Remaking the decision

6. The country guidance decision of MST and Others (national service -risk categories ) Eritrea CG [2016]UKUT 00443 was heard in June 2016. The earlier hearings did not have the benefit of this decision. It confirmed parts of the earlier country guidance cases and confirmed that the

Eritrean system of national service remains indefinite. Both representatives agreed I was in a position to remake the decision given the absence of any material factual dispute.

7. This appellant would be within the applicable age limits for conscription. If someone of draft age is perceived as an evader, subject to certain exceptions such as family connections, then they face a real risk of persecution or ill-treatment contrary to article 3 or 4. Someone who had exited lawfully who faced national service on return would also be at risk of persecution or serious harm contrary to articles 3 or 4(2)
8. Miss Adams relied upon this latest country guidance case. Mr. Diwnycz said that he was tied by the original decision which predated MST. He acknowledged the fact the appellant had lived all his life outside Eritrea was unlikely to materially change the risk he faced in relation to conscription or the treatment during service.
9. It was my conclusion that this appellant would face conscription on return. He had not left the country illegally because he was not born there nor had he ever lived there. However, at best his position on return would be akin to someone who had left the country lawfully but faced conscription. It is my conclusion in light of the country guidance cases the appeal succeeds. The appellant indicates he does not wish to serve in the military and consequently, he faces persecution by reason of imputed political opinions. Given the conditions of service he would be at risk of a breach of his articles 3 and 4 rights.

#### Decision.

The appeal is allowed under the Refugee Convention and Articles 3 and 4.

Deputy Upper Tribunal Judge Farrelly

26<sup>th</sup> May 2017