Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00394/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 30 November 2017	**On 11 December 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

DANIEL KIDANE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Marwaha, instructed by Bankfield Heath Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Daniel Kidane, was born on 21 March 1992 and claims to be a citizen of Eritrea. His nationality is disputed by the respondent. He entered the United Kingdom in December 2015 and claimed asylum. By a decision dated 4 January 2017, the Secretary of State refused the appellant's claim for asylum. The appellant appealed to the First-tier Tribunal (Judge E B Grant) which, in a decision promulgated on 6 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The parties agree that the judge erred in law such that her decision falls to be set aside. Granting permission, Judge Lindsley wrote:

> "[The appellant asserts that] … the First-tier Tribunal erred in law in finding the appellant not to be credible for failing to avail himself of a ready check at the Ethiopian High Commission when the respondent had not suggested he was Ethiopian and the appellant did not believe that he was either. The appellant is not covered by *ST (Ethnic Eritrean – nationality – return) Ethiopia* [2011] UKUT 00252."

3. For the reasons indicated by Judge Lindsley, it was plainly wrong for the judge to invoke the authority of *ST*. Accordingly, I set aside the decision. Helpfully, the appellant and his representatives had prepared for a resumed hearing before the Upper Tribunal. Before that hearing commenced, Ms Marwaha, Counsel for the appellant, asked me to preserve a discrete finding of Judge Grant regarding the appellant's claimed adherence to Pentecostal religion. After some discussion, I decided that I should preserve that finding which appears at [29]:

> "I find as a matter of fact that the appellant is a Pentecostol Christian and an active member of the faith."

4. Mrs Pettersen, for the respondent, did not seek to persuade me that the judge's error in respect of *ST* had in any way infected the finding regarding the appellant's religion. The hearing therefore proceeded on the basis that, if the Tribunal were to find that the appellant is Eritrean, he would be a refugee on account of the fact that he would face a real risk of persecution in Eritrea on account of his religion.

5. The burden of proof is on the appellant and the standard of proof is whether there are substantial grounds for believing there to be a real risk that the appellant would face persecution or ill-treatment (contrary to Article 3 ECHR) if he were to be returned to Eritrea. The Secretary of State's case is that the appellant is not Eritrean but Mrs Pettersen did not ask me to make any finding as to the appellant's actual nationality in the event that I found that he had failed to prove that he is of Eritrean nationality.

6. The appellant gave evidence in Amharic with the assistance of an interpreter. He adopted his written statements as his evidence-in-chief and he was cross-examined by Mrs Pettersen. I also heard evidence from the appellant's witness Mr Habton Hagos who also gave evidence in Amharic with the assistance of the interpreter. Mr Hagos is also a Pentecostal Christian who is a refugee in the United Kingdom. I note that he was granted refugee status by the Secretary of State; he has not engaged with the Tribunal system in the United Kingdom. I also heard evidence in English from the Reverend Peter Gray. Reverend Gray is a retired pastor of a Pentecostal Church which the appellant and Mr Hagos attend.

7. I reserved my decision.

8. I have considered the evidence as a totality before reaching any findings in this appeal. I have sought to concentrate on the "core" elements of the appellant's claim. I found the appellant to be a credible witness. Mrs Pettersen submitted that there was a discrepancy between what the appellant said regarding a visit to the Ethiopian Embassy and the evidence given by Reverend Gray who had accompanied him to the embassy. The discrepancy concerns to whom the appellant may or may not have spoken at the embassy. Given that the visit to the embassy was (in the light of the irrelevance of the decision in *ST* to the facts of this appeal) nugatory it is somewhat peripheral to the core of this appellant's account and, in any event, Reverend Gray was not certain as to whether the appellant did or did not himself speak to any of the officers at the embassy. I find there is no discrepancy and in particular no negative impact upon the appellant's credibility as a witness.

9. Mrs Pettersen also submitted that it was "strange" that the appellant should have travelled to the United Kingdom with 2,000 US dollars from his wife's family but should have left his wife and child behind in Sudan where they had been living illegally. The appellant said that there was not enough money to send the entire family to the United Kingdom. I find that the appellant is reasonably likely to be telling the truth. There was no suggestion that the appellant's wife and child had been left in difficult or dangerous circumstances in Sudan. The circumstances may, perhaps, be unusual, but I am aware that asylum seekers often have to take difficult decisions and I cannot say that the circumstances are so strange as to undermine the credibility of the appellant as a witness.

10. I agree with Mrs Pettersen that the appellant was a little vague when asked whether or not he had been arrested in the period leading up to his departure from Sudan. However, the appellant's evidence (that others were being arrested and this put him in fear and led him to leave the country) is consistent with the evidence which he gave at the asylum interview (question 129).

11. Other than the matters which I have detailed above, Mrs Pettersen made no serious challenge to the evidence put forward by the appellant. She passed no comment on the evidence of Mr Hagos whom I found to be a credible witness. However, I am aware that the weight attaching to his evidence (given that his own claim for asylum has never been tested under cross-examination) is limited. The same is also true of the Reverend Gray. The visit to the embassy which is detailed in the more recent supplementary bundle appears to have been carried out for the sake of completeness. The evidence of any of the witnesses regarding the visit does not, in my opinion, give rise to any credibility issues. As regards the appellant's conversion to Pentecostal Christianity, that, as I have noted above, has already been settled. I am reminded that the appellant needs to prove his case to the lower standard of proof. He needs to establish that the evidence which he has given is reasonably likely to be true. I have to say that evidence appears to be consistent as between the oral evidence he gave before me and the written evidence which appears in

the file, including his written statements and his interview with the Secretary of State's officers. As for the fact that the appellant speaks Amharic rather than an Eritrean language, Ms Marwaha directed me to objective material in the file which shows that Amharic is spoken in Eritrea and, in particular, in the port of Assab which is clearly somewhere of a melting pot for local cultures and languages. Although the appellant moved from Eritrea to Ethiopia when he was only 2 years old, he claims that his family originated in Assab. It is reasonably likely that the appellant is Eritrean, notwithstanding the fact that he speaks mainly Amharic.

12. Considering the appellant's evidence as a whole, together with the remainder of the evidence both oral and written, I have concluded that the appellant has discharged the burden of proving that he is Eritrean and that he was deported at the age of 2 years to Ethiopia. Given that he is an Eritrean rather than an Ethiopian citizen, any removal from this country would be to Eritrea where the appellant (as both parties agree) would face a real risk of persecution for ill-treatment on account of his Pentecostal religion. It follows that the appellant's appeal should be allowed.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 6 March 2017 is set aside. None of the findings of fact shall stand save for the Tribunal's finding at [29] that the appellant is an active member of the Pentecostal Christian faith. I have remade the decision following a resumed hearing. The appellant's appeal against the decision of the Secretary of State dated 4 January 2017 is allowed on asylum grounds and human rights grounds (Article 3 ECHR).

No anonymity direction is made.

Signed Date 1 December 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date 1 December 2017

Upper Tribunal Judge Lane