Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00492/2015**

THE IMMIGRATION ACTS

Heard at Bradford	**Sent to parties on:**
On 21 April 2017	**On 18 May 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MR ADAM MOHAMMED SAID

(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Siddique
For the Respondent: Mr Duffy

DECISION AND REASONS

1. This is the appellant's appeal to the Upper Tribunal, brought with the permission of a judge of the Upper Tribunal, from a decision of the First-tier Tribunal (Judge Dearden hereinafter "the Judge") to dismiss his appeal against the Secretary of State's decision of 26 June 2015 refusing to grant him international protection. The matter first came before me on 23 December 2016 and after that hearing, and in consequence of what had been said at that hearing, I set aside the Judge's decision whilst preserving certain of the findings. My reasons for doing so are explained in detail in a decision of 12 January 2017 which a reader of this decision might possibly care to read first.

2. By way of background, the appellant entered the United Kingdom ("UK") on 21 April 2015. It is recorded that he claimed asylum on the following day. In so doing, he said that he had been born to Eritrean parents in Sudan on 24 December 1990. His parents had fled Eritrea and had sought asylum in Sudan. The family, including the appellant himself, had been recognised as refugees by the Sudanese authorities. He says he is not a national of Sudan and has never made an application for such nationality but other family members of his, including his father, have done so but unsuccessfully. He has Eritrean nationality because both of his parents possess such nationality. He had been born in and had lived in a refugee camp with his family. However he claims that in November 2013 he decided to move to Eritrea. He says he took that decision because he had suffered harassment as an Eritrean refugee in Sudan and because he had an uncle in Eritrea who had urged him to go to that country. He claims to have been able to enter Eritrea lawfully by presenting to the authorities Eritrean identity cards belonging to his parents and says that he was subsequently given his own Eritrean identity card along with permission to reside in that country on a temporary basis. He claims to have managed to find some employment in Eritrea but says that the authorities there started conducting "round-ups" of people in order to coerce them into performing military service. In consequence of that he decided that he would have to leave Eritrea. He travelled back to Sudan on foot and then went to Libya before making his way, via various countries including certain European countries, to the UK. He asserted that were he to be returned to Eritrea he would be persecuted as a result of his avoiding military service or would be made to perform military service which would, of itself, be persecutory. He also asserts that if he were to be returned to Sudan (which is the country of proposed return) he would be "refouled", put another way, he would be sent from Sudan to Eritrea.

3. The Secretary of State disbelieved much of the above account and refused the asylum claim. The appellant appealed but the Judge dismissed his appeal and the Judge's written decision was sent to the parties on 31 August 2016. It is fair to say that the Judge, like the Secretary of State, did not believe quite substantial parts of the offered account. In that context, the Judge did not express disbelief as to the appellant's claim that he was a child of Eritrean parents and was a refugee in Sudan. However, the Judge thought that he would be able to obtain Sudanese citizenship with ease if he had not already done so and that in these circumstances there would be no risk of refoulment. The Judge also disbelieved, in its totality, the part of the account in which the appellant had claimed to have left Sudan, gone to Eritrea and then fled Eritrea.

4. When setting aside the Judge's decision I preserved the adverse findings regarding the claimed trip from Sudan to Eritrea. Specifically, I preserved the content of paragraphs 19(3), 19(5), 19(6) and 19(7) of the Judge's written decision. I directed a further hearing should take place before me in the Upper Tribunal so that the decision could be remade.

5. That hearing (a type sometimes referred to as a continuance hearing) took place on 21 April 2017. Representation was as stated above. I heard some relatively brief oral evidence

from the appellant which he gave with the assistance of an Arabic speaking interpreter whom he appeared to fully understand throughout. Having heard the evidence I received oral submissions from each representative. As to documentation, I had before me the various documents which had been before the Judge and I also had some additional UNHCR evidence which had been given to me at the hearing of 23 December 2016 and an additional bundle containing a short supplementary witness statement, some evidence concerning the claimed refugee status (as opposed to citizenship status) of the appellant and his father and some background country material.

6. The claimant, in his oral evidence to me, said that he still maintained his claim that he had left Sudan and gone to Eritrea. Some of his family members, having been recognised as refugees in Sudan, had sought Sudanese citizenship. They had applied to "the local authorities" who had told them that it was not possible to grant them citizenship. The appellant said, initially, that only oral applications had been made by them but he subsequently suggested written ones had been made. Pausing there, there was no clear explanation for that inconsistency. He said that these applications had been made a long time ago and he confirmed they had been made prior to his leaving Sudan. He had not made an application himself because, to his knowledge, all refugees in his position who had applied had had their applications rejected.

7. As to the submissions, Mr Duffy said he would rely upon the content of the original reasons for refusal letter as well as the preserved findings. The appellant has been found not to be credible regarding one component of his claim and he had given inconsistent oral evidence concerning the way in which his family had sought citizenship in the past. However, Mr Duffy acknowledged information contained in an Immigration and Refugee Board of Canada Report of 23 August 2016 (which is in the appellant's supplementary bundle file for the purposes of this hearing) supported the proposition that Sudanese nationality law was not applied to refugees in Sudan. He said that, on that basis, he could accept that the appellant and his family might well still be refugees as opposed to Sudanese nationals. However, whilst there was some background country material demonstrating that some Eritrean nationals had been deported from Sudan to Eritrea the numbers were very small given the amount of people who, in all probability, do travel from Eritrea to Sudan and try to settle there. The appellant himself had, on his own account, lived for many years in Sudan without being refouled. Accordingly, there was no real risk that upon return he would be.

8. Mr Siddique pointed to some documentation issued by the UNHCR which he said confirmed that the appellant was a refugee in Sudan as opposed to a national of that country. The Immigration and Refugee Board of Canada document does demonstrate that persons who are refugees in Sudan cannot realistically entertain hopes of gaining citizenship notwithstanding what legislation concerning citizenship might state. The appellant's account of citizenship being refused and of his suffering discrimination as a refugee in Sudan is plausible. I should find that he is not a Sudanese national.

9. As to the risk of refoulment, Mr Siddique submitted that there was a risk which was more than fanciful. It is not, he argued, appropriate to simply make a statistical calculation based upon the small numbers of Eritreans who had been returned. He would not have been at risk if he had remained in the camp but his account is that he chose to leave that camp and leave Sudan illegally. The authorities in Sudan would not approve of his having done that. He would be returned as a failed asylum seeker so would come to the attention of the authorities and they would ask him questions and would realise he had effectively chosen to reject the protection offered to him. That will be frowned upon. In the circumstances he would be in a distinct category of persons and would be at risk of refoulment. Background material does demonstrate that other Eritrean nationals in

Sudan have been returned to Eritrea. These are persons who would, according to UK case law, properly be regarded as refugees.

10. It is necessary for me to make some factual findings. In so doing I have taken account of all of the written and oral evidence which has been given to me. I have, of course, preserved certain findings and my doing so results in my concluding that the appellant is a person who is prepared to mislead if he feels that he might benefit from so doing. I have noted that Mr Duffy did not seek to persuade me that the appellant is not a Sudanese refugee from Eritrea and did not make any serious attempt to persuade me that he has or is likely to be able to obtain Sudanese citizenship. I find as follows:

(a) The appellant is a national of Eritrea because his parents were born in that country and are nationals of that country.

(b) I find that the appellant's parents left Eritrea, prior to the appellant's birth, and lived in a refugee camp in Sudan.

(c) I find that the appellant was born on 24 December 1990 in the Sudanese refugee camp and that his family have subsequently remained there but that he chose to leave the camp and leave Sudan towards the latter end of 2013.

(d) I find that the appellant and is family members were granted refugee status in Sudan in January 2004 (that is in accordance with UNHCR records).

(e) I find that the appellant's family did, at some point in the past, seek to apply for or at least make enquiries as to the possibility of applying for Sudanese citizenship but were informed such could not be obtained. I accept this part of the account because I think it is plausible that persons recognised as refugees would wish to effectively "upgrade" by seeking citizenship. I also find, in light of the content of the Immigration and Refugee Board of Canada document that such applications or enquiries were very likely to be rebuffed. (I note in passing that Mr Duffy appeared to accept the accuracy of what was contained in the report or, at least, did not seek to suggest it was not accurate).

(f) I find that the appellant became disenchanted with life in the refugee camp in Sudan. In this context there is background country material demonstrating that life is difficult for refugees in Sudan (see the 2015 US Department of State Country Report on Human Practices in Sudan). In particular, that report made mention of refugees and asylum seekers being subject to arrest outside the camps and indicated that refugees, whilst technically allowed to work, would rarely be granted work permits.

(g) I find that the appellant, as a result of his disenchantment, left Sudan illegally in the hope of finding something better in a different country. I accept he left illegally because, on the material before me, it seems unlikely that the Sudanese authorities would simply grant him some form of exit Visa and it seems unlikely he would apply for one.

(h) In light of the preserved findings, I conclude that the applicant, when he left Sudan, did not go to Eritrea and did not subsequently encounter any threat of being forced to carry out military service. Instead, I find that he simply embarked upon a journey

which has ultimately led to his coming, via many countries including some European countries, to the UK.

11. It is in light of the above findings that I must now consider what would happen to the appellant if returned. Of course, there is no suggestion that he will be sent to Eritrea. The Secretary of State's position has always been that he will be returned to Sudan though the Secretary of State does seem to accept and the Judge did find, correctly in my judgment, that if he were to be returned to Eritrea at any point he would be at real risk of being forced to undertake military service which would, itself, be persecutory. He is a healthy male of military service call-up age. So, the refoulment risk is important.

12. There is background country material demonstrating that, in recent years, some Eritrean nationals have been forcibly returned to Eritrea by the Sudanese authorities. Information about that is contained in a report entitled "Human Rights Watch, Sudan: hundreds deported to likely abuse" which was issued on 30 May 2016. It appears that all of these enforced returns took place in or about May 2016. Mr Duffy says that approximately 1,000 such persons were involved. The position is not entirely clear but I am happy to proceed on the basis that that is broadly correct. It is apparent from the report, though, insofar as it may be relevant, that not all of those Eritrean nationals had actually been recognised as refugees when forcibly returned. In fact, it may be that only six of them were. Presumably the others were persons who had entered Sudan illegally and had either made applications which had not been determined or had not made applications.

13. Mr Duffy suggested, entirely uncontroversially I think, that many persons leave Eritrea unlawfully and go, at least as a first stop, to Sudan. He says that there is an indication in the documentation that something in the region of 3,000 such persons arrive in Sudan each month. Extrapolating from that he argues that if a thousand such persons had been forcibly returned (and he does accept that) it represents only a very small percentage indeed of the number of such persons in Sudan. So, any risk of refoulment is fanciful because it hardly ever happens. Mr Siddique did not appear to dispute the likely figures.

14. Whilst it perhaps seem odd to base a conclusion as to real risk on a simple statistical analysis, I would be inclined to agree with Mr Duffy that the numbers might suggest any risk is fanciful if matters are looked at in that rather simple way. I also agree with Mr Siddique, though, that an assessment as to risk, in this case, has to be a somewhat more sophisticated one.

15. In that context, I have accepted (and such was not specifically disputed before me) that the background country material demonstrates refugees are treated poorly in Sudan with respect to such as access to citizenship and access to employment and that they are not welcomed outside of the refugee camps. The Human Rights Watch Report of 30 May 2016 referred to above mentions that, with respect to the enforced returns, the Sudanese authorities had arrested 377 people attempting to leave Sudan unlawfully to travel to Libya. It is noted that amongst those were 313 Eritreans including six who had been registered as refugees in Sudan, and that they were all deported. That does appear to suggest that, for whatever reason, the Sudanese authorities might wish to prevent Eritreans or other foreign nationals leaving their territory unlawfully or that they take exception to it. Of course, this appellant, according to my findings, will have left Sudan illegally albeit not to go to Eritrea as he has dishonestly claimed.

16. There is, I think, a degree of force in Mr Siddique's submissions that the Sudanese authorities are likely to take a dim view of the appellant having seemingly rejected the hospitality afforded to him by the authorities in Sudan by departing illegally. I place that alongside the

evidence of the authorities discriminating against refugees living in Sudan. I bear in mind that although the numbers are small the Sudanese authorities have shown themselves to be prepared to forcibly return to Eritrea some persons they have previously recognised as refugees. The appellant will not be able to simply sneak over the border to Sudan from a neighbouring country but will be actually returned by the UK authorities as a failed asylum seeker and so, I accept, is likely to come to the attention of the authorities in Sudan.

17. Putting all of that together I have concluded that, whilst the matter might be finely balanced, there is a real risk on the particular facts of this case that the Sudanese authorities would forcibly return the appellant to Eritrea.

18. In the circumstances, in remaking this decision, I allow the appellant's appeal against the Secretary of State's decision to refuse to grant asylum. I find that he is a refugee. I also allow the appeal, on the same basis and following the same reasoning, under Article 3 of the European Convention on Human Rights (ECHR).

Decision:

The appellant's appeal is allowed on asylum grounds.

The appellant's appeal is allowed on human rights grounds (Article 3 of the ECHR only).

Anonymity

I make no anonymity direction. None was sought by the appellant's representative.

Signed Date 15 May 2017

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

As no fee is payable I make no fee award.

Signed: Date: 15 May 2017

Upper Tribunal Judge Hemingway