Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11026/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 July 2017	**On 4 August 2017**

Before

UPPER TRIBUNAL JUDGE WARR

Between

MR MEDHANIE EYOUB TEKESTE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer of Counsel instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr Peter Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Eritrea born on 22 January 1984. He appeals the decision of a First-tier Judge who dismissed his appeal against the decision of the respondent to refuse his asylum application on 24 September 2016. The appellant's appeal came before the First-tier Judge on 10 November 2016.

2. In brief the appellant's claim was based on his fear that if he were returned to Eritrea he would face mistreatment due to draft evasion and illegal exit from Eritrea.

3. The appellant applied for asylum after arrival in the UK on 29 June 2009 but this claim was later withdrawn on 8 July 2011 as the appellant had absconded. He made an unsuccessful application for an EEA residence card and made further submissions on 23 July 2014 giving rise to the refusal of his asylum claim in September 2016, the subject of the appeal proceedings herein.

4. In paragraph 7 of the decision of the First-tier Tribunal the judge records the appellant's claim that he had been arrested from his home and taken to a military training camp from which he managed to escape with a friend. He went to Sudan where he was captured by Sudanese soldiers and was held captive for one week. He then managed to leave Sudan and travel to Libya before arranging for his journey to the United Kingdom.

5. Before the First-tier Judge the Presenting Officer applied for an adjournment in order to provide supplementary reasons to accompany the Reasons for Refusal Letter. His application was opposed by Counsel then representing the appellant who referred to **MST (National Service – risk category) Eritrea CG [2016] UKUT**.

6. The findings of the judge on the material before him are extremely difficult to interpret given the number of typographical and other errors that feature in the decision. Having found that the appellant's case would not lead him to be perceived as carrying out a political act in paragraph 45 of the decision the determination continues as follows:

> "46. I therefore make a finding that the appellant has not provided sufficient evidence even on the lower standard of proof that to show at that he would be imprisoned and that he would face a prolonged period of detention and all at is unlikely to be subjected to serious harm. The appellant's representative referred me at two the case of MST and others and I have at taken the findings of the tribunal in at this case into at consideration in my decision and reasons. It was stated in MST that it remains the case that subject to 3 limited exceptions that if a person of or approaching draft age will be at perceived on return as a draft evader or deserter and that he or she will face a real risk of persecution, serious harm or ill-treatment contrary to article 3 or 4 of the ECHR.
>
> The case of the appellant at is that he does not come within any of the three exceptions listed in MST and would therefore be at risk as a draft evader having left the country illegally. The evidence of the appellant is that he left Eritrea on 8 July 2007. In **MO Somalia (illegal exit – risk on return) Eritrea CG 2011**

UKUT they referred to MA Somalia at paragraph 33 it was indicated by the tribunal and that the key period in relation to that when people left Somalia is after August/September 2008, this date is seen as the turning point because according to the tribunal in MA Somalia there is credible evidence indicating that this was the point in time when the Eritrea authorities, angered by the growing number of cases of persons who had been granted exit visas who had then failed to return, decided to put your foot down by suspending exit visa facilities. I also note the comments of the tribunal in MST where it was stated: *"It continues to be the case (as in MO) that most Eritreans who have left Eritrea since 1991 have done so illegally. However, since there are viable, albeit still limited, categories of lawful exit especially for those of draft age for national service, the position remains as it was in MO, namely that a person whose asylum claim has not been found credible cannot be assumed to have left illegally. The position also remains nonetheless (as in MO) that if such a person is found to have left Eritrea on or after August/September 2008, it may be that inferences can be drawn from their health history or level of education or their skills profile as to whether legal exit on their part was feasible, provided that such inferences can be drawn in the light of adverse credibility findings. For these purposes a lengthy period performing national service is likely to enhance a person's skill profile. It remains the case (as in MO) that failed asylum seekers as such are not at risk of persecution or serious harm on return".*

47. I am not persuaded on the evidence that the appellant exited on the information before me, he left Eritrea in 2007 which was before the clampdown in granting of exit visas. On the facts the appellant travelled through several countries before he finally arrived in the United Kingdom and on his arrival he did make an asylum claim but he subsequently withdrew his application and that he pursued settled status through another route. I have taken this into account in making a finding that the appellant claim that to be a draft evader and a person who exited Eritrea illegally is without merit due to his conduct and immigration profile/history."

7. The judge was not satisfied that the appellant had left Eritrea illegally, would not be obliged to pay a diaspora tax and (perhaps curiously) would be able to relocate on his return. The judge dismissed the appeal on all grounds.

8. There was an application for permission to appeal. Permission was refused by the First-tier Tribunal. The application was renewed and permission was granted by Upper Tribunal Judge Perkins on 14 June 2017. It was arguable that the judge had not explained properly why the appellant was not one of the small identified categories of people from

Eritrea who was likely to be a refugee and had not gone further than making a general adverse credibility finding which was not sufficient to determine the appeal lawfully. There was a mass of "irritating typographical errors" and it was debateable whether these constituted a material error of law but all grounds could be argued.

9. On 30 June 2017 a response was filed under Rule 24. Rather unusually the respondent did not oppose the appellant's application for permission to appeal and referred to the matter being remitted de novo before the First-tier Tribunal. At the hearing Mr Palmer agreed that this was the position of the respondent in this case. Both parties accordingly requested me to remit the appeal for a fresh hearing de novo before a different First-tier Judge.

10. There had been no findings of fact on the details of the appellant's case and no explicit reasons had been given. The judge had not engaged with the details of the appellant's case – his military service and his escape for example. The determination was insufficiently reasoned.

11. At the conclusion of the submissions I reserved my decision. As Judge Perkins said, the fact that a determination contains typographical errors does not mean that it is materially flawed in law. It is difficult however in this case to reconcile the incoherence of the decision with the duty to give anxious scrutiny to a case of this nature. The extract above illustrates some of the problems with interpreting the decision – for example the reference to "The case of the *appellant* ... that he does not come within any of the three exceptions listed in **MST**" should clearly be a reference to the case for the *respondent*. The first sentence of paragraph 47 is not easy to construe either.

12. In essence the way in which Upper Tribunal Judge Perkins put the complaint appears best to encapsulate the position of the representatives before me – the general adverse credibility finding was not sufficient to determine the appeal lawfully. Neither side seeks to support the decision in this case. I accept that the factual analysis and reasoning is flawed. I agree that the matter must be remitted for a fresh hearing.

Decision

13. The appeal is allowed and remitted for a fresh hearing before a different First-tier Judge.

ANONYMITY ORDER

14. The First-tier Judge made no anonymity order and I make none.

FEE AWARD

15. The First-tier Judge made no fee award and I make none.

Signed Date 3 August 2017

G Warr, Judge of the Upper Tribunal