



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

Appeal Number: PA/10743/2019

THE IMMIGRATION ACTS

**Determined on the Papers at Field House
On 7th February 2020**

**Decision & Reasons
Promulgated
On 19th February 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE KING TD

Between

M A H J

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant claims to be a national of Eritrea. He entered the United Kingdom on 17th January 2015 and claimed asylum. This was refused. On 28th August 2019 the appellant made further submissions which were refused on 14th October 2019. The appellant sought to appeal against that decision to the First-tier Tribunal. The matter came before First-tier Tribunal Judge Brewer for hearing on 5th December 2019.
2. The Judge concluded, particularly having regard to the DNA evidence as set out in paragraph 19 of the determination, that the appellant was Eritrean. The Judge went on therefore to consider his situation and whether the return exposed him to a real risk of harm. It was concluded that there was no such risk and accordingly the appeal was dismissed.

3. The appellant sought to challenge that decision and permission to do so was granted essentially on the basis that the Judge had erred in law in failing to consider the appellant's risk on return to Eritrea in the light of the country guidance findings in **MST and others (national service - risk categories) Eritrea CG** and by failing to properly consider the Rule 35 medical evidence.
4. The matter has been listed in the Upper Tribunal on 3rd March 2020 for a determination on that issue.
5. The respondent in the Rule 24 notice dated 28th January 2000 has sought to challenge the First-tier Tribunal Judge's findings at paragraph 19 on the DNA evidence. It is said that the reasoning thereof is unclear. The Judge seems to find that although the DNA evidence links the appellant to a particular woman it is not clear whether that woman has been linked in the papers to the Eritrean national.
6. However, it is conceded that there was a material error of law in relation to the absence of consideration of the case of **MST**. The respondent submits that the proper course would be to remit the matter to the First-tier Tribunal to determine the appeal de novo. Those acting on behalf of the appellant in a letter dated 4 February 2020 express agreement with that proposed course of action.
7. Having considered paragraph 19 of the First-tier Tribunal determination it is somewhat difficult to understand how the Judge came to the conclusion as to the link between the Eritrean national and the woman whose DNA sample was compared with the appellant. Thus, it may well be that it is said it is important that that evidence be clarified with the proper continuity being shown.
8. Given the concern as to the absence of the application of the country guidance case it is clear that there would need to be reconsideration of that matter in any event.
9. It seems to me that the approach suggested by the respondent and concurred with by the appellant's representative is the appropriate one in all the circumstances.

Notice of Decision

The decision of the First-tier Tribunal should be set aside to be remade upon a de novo hearing in the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed P.D.King

Date 14 February 2020

Deputy Upper Tribunal Judge King TD