Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07941/2011

THE IMMIGRATION ACTS

Heard at : Field House	**Determination Sent**
On : 18 July 2014	**On : 25 July 2014**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Y H
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr A Everett, Senior Home Office Presenting Officer
For the Respondent: Mr G Davison, instructed by Blavo & Co Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State. For the avoidance of confusion, however, I shall refer hereinafter to the parties by the names used before the First-tier Tribunal, with the Secretary of State referred to as the "respondent" and YH as the "appellant".

2. The appellant, who was born on 7 September 1978, claims to be a citizen of Eritrea but is believed by the respondent to be a national of Ethiopia. He left Eritrea in November 2007 and travelled to Kenya where he remained until 1 May 2011. He then flew to France using a false passport and on 23 May 2011 he boarded a vehicle which brought him to the United Kingdom. He claimed asylum on 24 May 2011. His claim was refused on 22 June 2011 and a decision was made the same day for his removal from the UK.

3. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal before Judge Andonian on 5 August 2011 and allowed. Permission was granted to the respondent on 12 September 2011 to appeal to the Upper Tribunal. On 23 February 2012 Deputy Upper Tribunal Judge Wood set aside the decision for error of law and, following a hearing on 13 August 2012, re-made the decision by dismissing the appeal. Permission was granted to the appellant to appeal to the Court of Appeal and it was ordered by consent in the Court of Appeal that the appeal be allowed and the matter remitted to the Upper Tribunal for a complete reconsideration.

The Appellant's Case

4. The appellant's claim can be summarised as follows. He is an Eritrean national born in Assab who, at the age of two years, relocated with his family to Deberezeit in Ethiopia. He studied and worked in Ethiopia. In 1999 he converted from Orthodox Christianity to Pentecostal Christianity. In April 2000 his parents were deported to Eritrea by the Ethiopian authorities whilst he was away. In September 2000 he applied for, and was issued, a residence permit allowing him to live and work in Ethiopia. The permit was renewable every six months. He applied for four or five permits in total. His problems in Ethiopia began in December 2002 when a work colleague and friend of Somali descent was arrested at work on suspicion of being a member of the Oganden Liberation Front and he was himself arrested four hours later accused of being a spy for the Eritrean government. He was taken to the Defence Ministry Camp in Jigjiga and detained for 25 days before being released as a result of the payment of a bribe and on condition that he leave the country within 24 hours. On 11 January 2003 he left Ethiopia and went to Eritrea, where he registered his return with the immigration department in Assab and was issued with an Eritrean identity document. In May 2003 his mother was hit by a car and was left disabled, with the result that he was temporarily exempted from military service for six months. His mother died on 21 July 2004 but he was still never called up. On 15 September 2004 he was arrested at home when conducting a Pentecostal prayer meeting and was detained at a police station for two days before being sent to prison. His uncle eventually found out where he was and secured his release through a bribe on 1 or 2 November 2007. He left Eritrea that month and travelled to Kenya where he remained until 1 May 2011. He flew to France on a false passport and then came to the United Kingdom.

5. The respondent did not accept that the appellant was an Eritrean national or that he had registered his return to Eritrea with the Eritrean Immigration

Department. It was considered that his account of being exempt from military service in Eritrea was inconsistent with the background information. It was considered that he fulfilled the criteria needed to prove that he was an Ethiopian national or that he could re-acquire Ethiopian nationality and that the Ethiopian authorities would therefore readmit him into the country and treat him as an Ethiopian national. The respondent accepted that the appellant was a Pentecostal Christian but did not accept his account of being detained from his home at a prayer meeting and put in prison. It was not accepted that he would be at risk on return to Eritrea on account of having left illegally. Neither was it accepted that he would be at any risk on return to Ethiopia.

6. In a supplementary refusal letter dated 4 August 2011, the respondent rejected the appellant's claim to be at risk on return to Ethiopia as a result of imputed political links to the Oganden National Liberation Front (ONLF) and rejected his account of his arrest by the Ethiopian authorities in December 2002 as being inconsistent with the background information.

7. The appellant's appeal was heard by First-tier Tribunal Judge Andonian on 5 August 2011. Judge Andonian considered that the respondent's challenges to the appellant's credibility were unclear but noted that it appeared to be the case that the respondent accepted the appellant's Eritrean ethnicity, accepted that he did not currently hold Ethiopian nationality, accepted that he fled to Eritrea in 2003 and accepted that he was a Pentecostal Christian. What appeared to be disputed was the appellant's claimed Eritrean nationality, but he accepted the appellant's account in that regard. He considered the basis of the respondent's assertion that the appellant was entitled to Ethiopian nationality to be unclear and considered it unreasonable to expect him to approach the Ethiopian Embassy given his claimed fear of the Ethiopian authorities. He found that the appellant was at risk of persecution in Eritrea on account of his religion, as a perceived draft evader and due to his illegal exit. He also found that, aside from the question of deprivation of nationality, he was at risk of persecution in Ethiopia as a result of his political beliefs combined with his ethnicity. He allowed the appeal on asylum and Article 3 human rights grounds.

8. The respondent sought permission to appeal against that decision on the grounds that the judge had wrongly found that the respondent's credibility findings were unclear and had misunderstood which aspects of the appellant's claim had been accepted by the respondent. It was asserted that the appellant's claim not to hold Ethiopian nationality had been rejected in the refusal letter. The grounds asserted further that the judge had failed to address the adverse credibility findings made in the refusal letter and the addendum letter in regard to the appellant's claim to be at risk in Ethiopia, which in turn materially affected his conclusions in regard to his ability to acquire or confirm his Ethiopian nationality.

9. Permission was granted on the grounds raised, on 12 September 2011.

10. In a Statement of Reasons attached to an Order of the Court of Appeal remitting the matter to the Upper Tribunal on 4 June 2014, the respondent accepted that there was merit in the appellant's argument as to errors of law made by Deputy Upper Tribunal Judge Wood both in his decision to set aside Judge Andonian's decision and in his own decision dismissing the appeal.

Appeal hearing

11. The appeal came before me on 18 July 2014. It was agreed by all parties that the consequence of the Order made by the Court of Appeal was that Judge Wood's decisions had been quashed and that the current position was that the respondent's appeal against Judge Andonian's decision allowing the appellant's appeal had yet to be determined. It was therefore for me to decide whether Judge Andonian's decision ought to be set aside by reason of error of law.

12. I therefore heard submissions on the error of law. It was agreed that the respondent had conceded that the appellant could not be returned to Eritrea on account of his Pentecostal Christian faith and that accordingly the respondent's challenge was in regard to the findings relevant to removal to Ethiopia.

Consideration and findings.

13. I find merit in the respondent's second challenge in regard to the judge's findings on risk on return to Ethiopia. At paragraph 28 of his determination the judge found that the appellant would not be able to approach the Ethiopian Embassy to demonstrate that he could not acquire or re-acquire Ethiopian nationality, as he had "a good reason to fear the authorities of Ethiopia". Whilst it can be assumed, from the following paragraphs concerning the risk on return to OLNF supporters, that the basis for that finding was the appellant's claim to fear the Ethiopian authorities as a result of events in December 2002, he failed to engage in any way with the respondent's challenge to his account of those events.

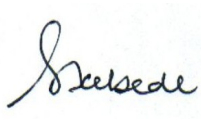
14. In the addendum to the refusal letter, the respondent gave detailed reasons as to why the appellant's account of his arrest and detention in Ethiopia was not accepted, concluding that it was inconsistent with the background information. Judge Andonian was clearly aware of that challenge, as he set it out in full at paragraphs 18 to 20 of his determination. However nowhere in his findings did he seek to engage with it, but rather he simply accepted the appellant's account of events without giving any substantive reasons for so doing. At paragraph 25, he found, in somewhat vague terms, that the appellant's description of events in Ethiopia was consistent internally and with objective known facts, yet he failed to explain how that was the case, particularly when it was the respondent's case that the account was inconsistent with the background information. As Ms Everett submitted, that failure was material given that it dictated his findings on the appellant's ability to acquire or re-acquire his Ethiopian nationality. That is particularly so, given the Upper Tribunal's guidance at paragraph (3) of the head-note to ST (Ethnic Eritrean - nationality - return) Ethiopia CG [2011] UKUT 252.

15. Accordingly I find that the judge's conclusions, with respect to the appellant's ability to acquire/ re-acquire Ethiopian nationality and with regard to risk on return to Ethiopia, are not sustainable. I therefore set aside his decision in that respect.

16. It was agreed by the parties that, in the event an error of law was found in the judge's decision and it was set aside, it would be appropriate for the case to be remitted to the First-tier Tribunal, in order for fresh evidence to be heard and fresh findings to be made in regard to the appellant's account of events in Ethiopia and the question of Ethiopian nationality and risk on return to Ethiopia. Whilst there has been no specific challenge to the judge's findings on the appellant's account of his registration with the Eritrean Immigration Department, it is relevant to note that the circumstances of his arrival in Eritrea are to a large extent dependant upon an acceptance of his account of his departure from Ethiopia and therefore findings will have to be made in that regard in order properly to determine the question of nationality.

DECISION

17. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Andonian and Judge Wood.

Signed 

Upper Tribunal Judge Kebede