



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

Appeal Number: AA/06768/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

Promulgated

On 8th May 2015

On: 1st July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A Y

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Tarlow, Senior Home Office Presenting Officer

For the Respondent: Ms L Wilson, Counsel instructed by Blavo & Co solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of First-tier Tribunal Judge Quinn promulgated on 29th January 2015, whereby the judge allowed the respondent's appeal against the decision of the SSHD dated 29th August 2014 to remove the respondent from the UK.
2. The respondent claims to be a citizen of Eritrea. The First-tier Tribunal considered it necessary to make an anonymity direction. In the circumstances I make an anonymity direction.
3. By decision made on the 10th February 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appeared before me to determine in the first instance whether or not there is an error of law in the original determination.

4. The grounds of appeal raise the issue of the nationality of the respondent and whether Judge Quinn had made a finding on that issue. Accompanying the Reason for Refusal Letter are Detailed Reasons for Refusal. In those detailed reasons are listed, which caused the SSHD to conclude that the respondent is not a national of Eritrea. In paragraph 32 to 41 of the Detailed Reasons there is a careful assessment of the evidence and reasons are given for concluding that the respondent is not a national of Eritrea.
5. In the Decision in dealing with the issue of Nationality Judge Quinn in the final sentence of paragraph 12 states:-

The Respondent [*the appellant herein*] did not dispute that the Appellant [*the respondent herein*] was Eritrean.
6. In the light of that Judge Quinn did not consider the issue of nationality. The SSHD had clearly challenged the nationality of the respondent and no finding had been made on that issue. It was necessary to deal in the first instance with Nationality and the judge has not done so. If the respondent is not a national of Eritrea, an assessment needs to be made on the basis that he is not a national of Eritrea as to whether he is at risk. No assessment of nationality has been made and no assessment of whether there is a risk in such circumstances. That is a material error of law. In turn that approach may impact upon the findings made.
7. Further as identified in the leave there are inconsistencies in the respondent's evidence. Judge Quinn has not sought to assess the discrepancies or given reason for failing to do so or assessed the impact of those inconsistencies on the credibility of the respondent's account. The failure to deal with the inconsistencies and the failure to give adequate reasons to justify that approach undermines the findings of fact made by Judge Quinn.
8. In the circumstances there are material errors of law and the decision by the First-tier Tribunal cannot stand.
9. I invited the parties to address me as to how the appeal should proceed if there were errors of law.
10. I have considered carefully the submissions made but the findings of fact by the First-tier Tribunal cannot stand. It is necessary for fresh findings of fact to be made. In the light of that the appropriate course is for this appeal the decision to be heard afresh in the First-tier Tribunal.

Decision

11. There are material errors of law in the determination. I set the decision aside and direct that the appeal be remitted to the First-tier Tribunal to be heard afresh.

Signed

Dated

Deputy Upper Tribunal Judge McClure