Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05575/2015

THE IMMIGRATION ACTS

Heard at UTIAC Stoke	**Decision & Reasons Promulgated**
On 9 May 2016	**On 27 May 2016**
Prepared 9 May 2016	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Y K A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Claimant: Mr McVeety, Senior Presenting Officer
For the Respondent: Ms L Mensa, Counsel, instructed by AJO Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant a national, which was disputed, of Eritrea appealed against the Secretary of State's decision dated 12 March 2015 to make removal directions following the refusal of an asylum/human rights based claim and a form IS151A having been served on 29 July 2014.

3. The appeal came before First-tier Tribunal Judge M Davies whose decision [D] allowed the appeal on Refugee Convention grounds on 26 June 2015.

4. The Secretary of State in grounds, dated 1 July 2015, challenged that decision. Permission to appeal was given by First-tier Tribunal Judge Kelly on 13 July 2015.

5. The reasons given by Judge Kelly for granting permission are really a bare recitation of the Secretary of State's claim and perhaps should have addressed the broader picture, in the light of the many positive findings of fact and there being no adverse criticisms of the Claimant's credibility on the many material issues, of whether or not, even if there was some substance in the Secretary of State's criticisms, ultimately no real purpose would be served. One way or another the fact was that since that decision many months have passed: Nearly a year in effect in the life of the Claimant. I consider this matter entirely on the basis advanced by Mr McVeety. I am satisfied on a fair reading of the judge's decision that he was taken to the relevant issues as viewed by the parties in terms of the evidence and submissions made. What was clear was that the judge realised that the Secretary of State took the point that the Claimant had not sought permission to travel from the Ethiopian authorities in London, as contemplated by the cases of **MA** [2009] EWCA Civ 289 and **ST Ethiopia** CG [2011] UKUT 52. If a positive case was being advanced that he could not obtain travel approval to make attempts to obtain appropriate documentation an application should have been made.

6. The Claimant's representatives and the Claimant, as set out in paragraphs 68 to 84 of his evidence, explained why the view was taken that there was

no point in actually making any application to the Ethiopian Embassy because there was, as understood by them, no documentation available as required for such, bearing in mind when the Claimant left Ethiopia and came to the United Kingdom.

7. In reply Mr McVeety submitted it was clear from the case of **MA** that there is not just an expectation but in effect an imperative to make an application to the Ethiopian authorities to allow the Claimant to return to Ethiopia and absent of doing all those steps including making a formal application with or without necessary documentation meant that the guidance in **MA** and **ST** simply was not being properly addressed and any appeal should be refused.

8. From that position Mr McVeety argued that according to a significant amount of case law which re-stated the self-evident point that each party to an appeal is entitled to reasons which disclose why on key relevant issues a Claimant has failed or succeeded or indeed similarly for the Secretary of State's.

9. There is much force in Mr McVeety's point as a general point. Looking at the decision as a whole it is clear from the findings of fact made bearing in mind the judge was aware and found, [D 46] on that particular issue, that the Claimant was a credible witness in terms of:-

10. First, fluency as a Tigrinyan speaker.

11. Secondly, the Claimant's claim to be a Pentecostal Christian was genuine.

12. Thirdly, the judge decided having heard the evidence of the Claimant that the significance of points made by the Secretary of State concerning the interview were not in the judge's view of the adverse kind that the Secretary of State wished to argue.

13. Fourthly, the Claimant had given a truthful and accurate account of where he lived in Eritrea which had been confirmed by documentary evidence presented.

14. Fifth, the Claimant was found to be a credible witness of fact.

15. Sixth, the Claimant had, as claimed, been the subject of past ill-treatment.

16. Seventh, the Claimant's faith had continued to be practised in the United Kingdom and importantly that the Claimant was a truthful witness of fact.

17. Eight, the Claimant had left Eritrea illegally and would be regarded as a deserter from military service if returned to Eritrea. In those circumstances he would be liable to be picked up and materially ill-treated so as to engage the Refugee Convention.

18. Ms Mensa therefore argued, in the light of those findings so positively made and acceptance of the Claimant's evidence, even though the entirety was evidently not recited in the decision the judge need do no more. The judge had tackled the material issue of the origins of the Claimant and where he could be returned to. The judge must have accepted that the Claimant had been forcefully evicted along with many thousands of other Eritreans on account of their ethnicity in the circumstances that arose in the conflict between those two countries.

19. I agree that the Claimant had failed to undertake the exercise as expected in **MA** and **ST**. It seemed to me, on the findings of fact that were made, the fact that the application was not made and undertaken in the circumstances, indicated that the failure would not make any material difference were the matter re-made: Particularly when there are no substantive challenges in the grounds of appeal by the Secretary of State to the judge's findings. I think it was correct to say that the findings of fact, other than the judge's decision on the country of origin, should stand.

Therefore to re-make this matter, absent of any other evidence other than that issue, suggests no different outcome was likely to arise. It is unfortunate the judge's failure to address that matter with reasons has unsurprisingly prompted a legitimate challenge to that aspect of the decision.

20. The second aspect of the decision that was challenged was whether the judge had properly dealt with issues raised in paragraphs 23 to 27 of the Reasons for Refusal Letter. In this respect Mr McVeety rightly and with some insight accepts the difficulty of that as an issue for two reasons. First, if you look at those issues in the light of the positive findings of fact made they are not of particular substance. Secondly, the Claimant had set out his substantive responses to those issues in his long statement of evidence, although again the judge did not, as might be expected, address it. It seemed to me therefore that if those matters were looked at again they are unlikely to have made any material difference to the outcome of the Claimant's appeal.

NOTICE OF DECISION

The Original Tribunal's decision stands.

The Secretary of State's appeal is dismissed.

21. The anonymity order that was made is continued.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Claimant 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 Claimant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 24 May 2016

Deputy Upper Tribunal Judge Davey