Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/07774/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 10 February 2016	**On 22 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

T S
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Ms O Taiwo, UK Law, solicitors

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the

public to identify the appellant, to preserve the anonymity order deemed necessary by the First-tier Tribunal.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Hussain, promulgated on 15 December 2015, which allowed the Appellant's appeal.

Background

3. The Appellant was born on 1 January 1988 and is a national of Eritrea.

4. On 24 April 2015 the Secretary of State refused the Appellant's application for asylum.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hussain ("the Judge") allowed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 6 January 2016 Judge Astle gave permission to appeal stating *inter alia*

> *"The Respondent accepted the Appellant's Eritrean nationality and her illegal exit from the country but sought to depart from the guidance in MO (Illegal exit – risk on return) Eritrea CG[2011] UKUT 00190 (IAC) on the basis of what she considered to be new evidence. At paragraph 41 the Judge said in effect that he was bound by country guidance until it was overturned. In so doing it is arguable that he failed to have regard to Practice Direction 12.2. Permission is therefore granted."*

The hearing

7. Ms Everett, for the respondent adopted the terms of the grounds of appeal. She told me that the focus in this case is on [41] of the decision. There, she told me, the Judge summarily dismissed the background materials relied on by the appellant and did not carry out any analysis of that evidence. She told me that the Judge had approached the evidence as if he was fettered by country guidance cases, and did not make either inquiry into, nor analysis of, the evidence. In short, there has been a flaw in the Judge's fact finding exercise because he has not analysed the background materials. Ms Everett reminded me that the President of the Upper Tier will hear a case which may form new country guidance for Eritrea in March this year.

8. For the appellant, Ms Taiwo told me that the decision does not contain an error of law, material or otherwise. She reminded me that the appellant's bundle contained background materials from a number of

different sources, and argued that the Judge had taken account of the background materials as well as country guidance case-law. She told me that the decision is a careful, balanced decision in which the Judge has made findings in fact before considering risk on return to Eritrea. She told me that the Judge correctly considered the background materials and the case-law to evaluate risk on return, and that his decision to follow country guidance is not an error of law.

Analysis

9. At [39] the Judge correctly identifies that the cases of MO (Illegal exit – risk on return) Eritrea CG [2011]UKUT 00190 IAC and MA (draft evaders ; illegal departures; risk) Eritrea CG [2007] UKAIT 00059 as country guidance cases which have relevance to this case. At [40] the Judge sets out the respondent's argument that the country guidance cases should not be followed in this case and at [41] the Judge sets out his reasons for finding that the country guidance cases apply to this case.

10. The Judge's reasoning is not flawless, but it does not contain a material error of law. In AF (2004)UKIAT 00284 the Tribunal said that failure by Adjudicators to follow country guidance cases was an error of law. That was also the view of the Tribunal in MY(Eritrea) 2005 UKAIT 158**.**

11. In OM(AA Wrong in Law) Zimbabwe CG 2006 UKAIT 00077 the Tribunal said that a Country Guidance case stands until it is replaced or found to be wrong in law. It will not be appropriate to grant an adjournment on the grounds that a party is seeking to challenge a relevant Country Guidance case in the higher courts. Where a Country Guidance case is replaced because of a change of country conditions or because further evidence has emerged, that will not mean that it was an error of law to follow it. However, where a Country Guidance case is found to be legally flawed, the reasons for so finding will have existed both before and after its notification. The error is effectively replicated in the decision which followed it and so there would be an error of law in that decision too.

12. It is argued that the Judge failed to analyse the background materials relied on by the respondent. It is not surprising that the Judge did not carry out a detailed analysis of the Danish immigration service fact-finding mission report, because the respondent did not produce it. I have the respondent's PF1 bundle together with the appellant's bundle. The case file indicates that those were the documents produced to the first-tier.

13. At [47] and [48] of the reasons for refusal letter the respondent relies on her own country of information guidance dated March 2015. That guidance draws heavily on the Danish immigration services fact-finding mission report. The Judge cannot be faulted for a failure to analyse a report which is only summarised in the respondent's COI report. The Judge cannot be criticised for failing to analyse a report which was not placed before him.

14. At [41] the Judge declares that he is not prepared to find that the extant country guidance is redundant and, in the second sentence of that paragraph, makes it clear that he prefers the country guidance to the background materials relied on by the respondent. That is a finding of fact which demonstrates that the Judge has taken account of all of the evidence in this case and reached the conclusion that there is insufficient reliable evidence to merit departure from country guidance.

15. At paragraph 49 of MA (Somalia) [2010] UKSC 49, it was said that "*Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned*". McCombe LJ in VW(Sri Lanka) C5/2012/3037 said "*Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact*"

16. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

17. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning. The decision does not contain a material error of law.

CONCLUSION

18. No errors of law have been established. The Judge's decision stands.

DECISION

19. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed Date 15 February 2016

Deputy Upper Tribunal Judge Doyle