IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07982/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2 September 2015	**On 6 January 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

EFROM KIBROM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hussain, instructed by Immigration Advice Service (IAS)
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Efrom Kibrom, was born on 12 January 1990 and claims to be a citizen of Eritrea. He was refused asylum by a decision dated 24 September 2014 when a decision was also taken to remove the appellant as an illegal entrant. He appealed against that decision to the First-tier Tribunal (Judge Hillis) which, in a decision promulgated on 1 December 2014 allowed the appeal. The Secretary of State appealed to the Upper Tribunal. By a decision dated 26 February 2015, I set aside the First-tier Tribunal decision and directed that a decision would be remade following a

resumed hearing which took place at Bradford on 2 September 2015. My reasons for finding that the First-tier Tribunal erred in law were as follows:

2. The respondent, Efrem Kibrom, was born on 12 January 1990 and claims to be a male citizen of Eritrea. I shall hereafter refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant appealed to the First-tier Tribunal (Judge Hillis) against a decision of the respondent dated 24 September 2014 to remove him from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999. The respondent had refused the appellant's claim for asylum. The First-tier Tribunal, in a determination promulgated on 1 December 2014, allowed the appeal on asylum and human rights grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The respondent had accepted that the appellant was a Pentecostal Christian (refusal letter, [39]). However, the respondent disputed the appellant's claim that he was an Eritrean citizen and considered that the appellant was "believed to be a national of Ethiopia." [42]. Because the appellant would not face a real risk of persecution or ill-treatment in Ethiopia, the respondent declined to grant him refugee status. Judge Hillis considered the evidence which was before him and found that "The sole source of the evidence before me that the appellant is an Eritrean by birth is his own testimony." By the appellant's own account, he had left Eritrea at a very young age (4 years) as regards Ethiopia, Judge Hillis found:

> "Equally, I cannot conclude for the same reasons set out above that the appellant is, in fact, an Ethiopian national. There is no evidence before me the appellant either personally or by someone on his behalf has ever sought to be granted any formal naturalisation or residential status in Ethiopia. I bear in mind that the appellant was a juvenile when he claims he last lived in Ethiopia. I find, on the evidence before me, that Ethiopia was the appellant's country of habitual residence."

4. The judge went on to find [32] that there was "no presumption that [the appellant] would be accepted on removal to Ethiopia as one of its nationals by the Ethiopian authority." The judge found that there was:

> "... no evidence before me that the appellant is in possession of or could obtain any identity documents to show that he is Ethiopian and would simply have to rely on his own knowledge of Ethiopia, his previous school records if they are available and his ability to speak Amharic even if he failed to mention his declared Eritrean nationality for fear of deportation to Eritrea due to the real risk of persecution on removal to Eritrea as a Pentecostal Christian which is not an issue in this appeal (*sic*)." [34]

The judge directed himself to *MA (disputed nationality) Ethiopia* [2008] UKIAT 00032. The respondent asserts that the judge incorrectly applied *MA* or that he failed to engage with the contentions made in the refusal letter that the appellant's evidence as regards Ethiopia was at odds with the background material relating to that country.

5. The appellant claimed to have been educated in Ethiopia. The refusal letter [33] noted that:

> "... even for Ethiopian children education is not a right and is not deemed to be an important element of a child's upbringing. Therefore, it is considered as an Eritrean refugee in Ethiopia you would not have been offered the opportunity to study at school over and above Ethiopian children. As such it is considered that your character is not consistent with the objective evidence."

The judge did not engage with that contention or, if he did reject it, he gave no reasons for doing so. Further, although the judge did refer to *MA*, he has not referred to *ST (ethnic Eritrean – nationality – return) Ethiopia CG* [2011] UKUT 252 (IAC). Part of the country guidance of *ST* ([4-5]) is relevant to the issues before the First-tier Tribunal and I note that a copy of that case was in the papers put before Judge Hillis:

> (4) Although, pursuant to MA (Ethiopia), each claimant must demonstrate that he or she has done all that could be reasonably expected to facilitate return as a national of Ethiopia, the present procedures and practices of the Ethiopian Embassy in London will provide the backdrop against which judicial fact-finders will decide whether an appellant has complied with this requirement. A person who is regarded by the Ethiopian authorities as an ethnic Eritrean and who left Ethiopia during or in the immediate aftermath of the border war between Ethiopia and Eritrea, is likely to face very significant practical difficulties in establishing nationality and the attendant right to return, stemming from the reluctance of the Ethiopian authorities to countenance the return of someone it regards as a "foreigner", whether or not in international law the person concerned holds the nationality of another country (paragraphs 93 to 104).
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> (5) Judicial fact-finders will expect a person asserting arbitrary deprivation of Ethiopian nationality to approach the embassy in London with all documentation emanating from Ethiopia that the person may have, relevant to establishing nationality, including ID card, address, place of birth, identity and place of birth of parents, identity and whereabouts of any relatives in Ethiopia and details of the person's schooling in Ethiopia. Failing production of Ethiopian documentation in respect of such matters, the person should put in writing all relevant details, to be handed to the embassy. Whilst persons are not for this purpose entitled to portray themselves to the embassy as Eritrean, there is no need to suppress details which disclose an Eritrean connection (paragraph 105).

6. Whilst I acknowledge that the appellant in the present appeal has not assert that he was arbitrarily deprived of Ethiopian nationality, it is clear that he has undertaken none of the steps referred to in *ST*. As the passages which I have quoted from Judge Hillis's determination indicate, the judge has dealt only with the difficulties which the appellant might encounter upon return to Ethiopia; he has not considered at all whether the plausibility of the appellant's return to Ethiopia might have been explored by the appellant through contact with the Ethiopian Embassy in London. It is clear from *ST*, that, in order to discharge the burden of proof

upon him or her, an appellant will be expected to take the steps referred to at headnote [4-5] if he wishes to prove that he is not a citizen of Ethiopia or cannot regain citizenship of which he has been arbitrarily deprived. Because he has failed to examine these matters, Judge Hillis's analysis is incomplete. In addition, I find that the judge should have engaged with important contentions made in the refusal letter, for example, as regards the appellant's claimed education in Ethiopia. Accordingly, I find that Judge Hillis' determination is unsound and should be set aside. None of his findings of fact shall stand. The decision may be remade in the Upper Tribunal; I accept that the appellant may now wish to obtain evidence of the kind envisaged in *ST* but otherwise there is no need for an extensive and new fact-finding exercise. I direct therefore as follows:

(a) The determination of the First-tier Tribunal is set aside. None of the findings of fact shall stand.

(b) The decision will be remade following a resumed hearing in the Upper Tribunal before Upper Tribunal Judge Clive Lane.

(c) The parties shall send to the Tribunal and to each other copies of any documentary evidence upon which they may seek to rely no later than five days before the date fixed for the resumed hearing in the Upper Tribunal. Time estimate shall be two hours. An Amharic interpreter will be provided by the Tribunal.

7. The burden of proof is on the appellant and the standard of proof is whether there is a real risk that the appellant would suffer, respectively, persecution or treatment contrary to the ECHR Articles 2/3 if he were to be returned to Eritrea or Ethiopia. The decision to make removal directions specifies both Eritrea and Ethiopia as countries to which the appellant may be removed.

8. In her reasons for refusal letter which is dated 23 September 2014, the Secretary of State accepts that the appellant is a Pentecostal Christian [39] but rejected other aspects of his claim. The appellant claims that he was born in Eritrea and is therefore an Eritrean citizen he also states that he spent the years 1994-2007 living in Ethiopia. He speaks Amharic but also Arabic and claims to speak Tigrina (a primary language of Eritrea). The Secretary of State considered that the Appellant was either an Ethiopian citizen purporting to be an Eritrean or would be admitted to Ethiopia where he would not be at risk. It was accepted by the Secretary of State that followers of the Pentecostal Christian faith are at risk in Eritrea.

9. I have considered all the evidence both documentary and oral. The appellant gave evidence before the Upper Tribunal at the hearing on 2 September 2015. I have those papers which were before the First-tier Tribunal on the previous occasion and also an expert report prepared by Mr David Seddon which was prepared in the spring of 2015.

10. Cross-examined by Mrs Pettersen, the appellant explained that he had left Ethiopia in 2007 and travelled to Sudan with his aunt. He claims that he left Ethiopia because he had no status ("documents"). He claims that he went to school in Ethiopia for about three years (1997-1999). He has no contact now with his uncle or aunt who both, when he was last aware of their whereabouts, were in Ethiopia. The appellant married in 2002 and his wife is from Eritrea but she also lives in Sudan now undertaking domestic work. The appellant contacted the Eritrean Community who produced a letter dated 9 April 2015. So far as he was aware, the enquiries made regarding his nationality and which were referred to in that letter had been questions asked of the appellant himself and not of any (unidentified) third party.

11. I refer to the difficulties which arose with the previous First-tier Tribunal decision and the failure of the judge to apply the country guidance case law in particular, *ST (ethnic Eritrean – nationality – return) Ethiopia CG* [2011] UKUT 252 (IAC). As I noted in my error of law decision [5], the appellant does not claim that he has been arbitrarily deprived of Ethiopian nationality. He has, however, lived for a very long period of his relatively short life in Ethiopia and the question arises as to whether or not he would be admitted to live in that country either as a citizen or otherwise. Dr Seddon, the appellant's expert witness, helpfully dealt with the administrative procedures which may be of relevance to the appellant in his report:

> "When asked why [the appellant] could not return to Ethiopia, he answered that he had no documents was concerned that if he approached the authorities in Ethiopia for residency he would be imprisoned as a criminal or deported to Eritrea. According to the [reasons for refusal letter], directives were issued in January 2004 by the Ethiopian Immigration Department to regularise the status of Eritreans returning to Ethiopia and in any case the objective evidence suggests that the Ethiopian authorities have not returned any Eritreans to Eritrea since 2000. Furthermore, it is possible for Eritreans to obtain Ethiopian citizenship and there is no objective evidence to suggest that Eritreans in Ethiopia are detained by the authorities as criminals and killed or deported, as claimed. It was suggested that, "although it may not be easy to obtain in all cases, citizenship is possible in Ethiopia for Eritreans"." [Paragraph 36]

12. Dr Seddon goes on to note that the appellant claims to be an Eritrean citizen and that it would "necessarily mean abandoning any claim to Eritrean citizenship (dual nationality is not permitted) if the appellant were to follow that course of action and seek to become a citizen of Ethiopia." Dr Seddon asks, rhetorically, "Why should [the appellant] give up his own nationality?" I accept Mrs Pettersen's submission that much of Dr Seddon's report amounts to advocacy and special pleading, rather than objective expert evidence and that limited weight should be attached to it in consequence. The passage which I have quoted above is, in my opinion, an example of that.

13. Dr Seddon states that the appellant has none of the necessary documentation required to approach the Ethiopian authorities. Having said that, Dr Seddon appears to accept that the respondent is correct in her assertion that the appellant's fear that he would be deported to Eritrea from Ethiopia or jailed for having no documentation was unfounded.

14. In my error of law decision, I made directions [5] to enable the appellant to adduce new evidence "of the kind envisaged in *ST* ..." and a witness statement has been adduced by the appellant indicating that he approached the Ethiopian Embassy in London on 31 March 2015. It appears that he attended at the embassy because his solicitors had received an email dated 26 March 2015 from an officer (Mulugeta Asseratte Kassa) at the embassy stating, "Further to your email enquiry I am pleased to inform you that the Consular Service is willing to listen to your client at any time during working hours as you do not need a special appointment." In the light of that email, the appellant travelled to London. However, he claims that,

> "When I arrived at the embassy I entered the building and approached the reception. I spoke to a gentleman there and I explained that my representative has been in contact with the embassy and I produced a copy of the email that the embassy sent to my representative. I was told that it was impossible for me to be seen. I was told the reason why they sent that email was for me to attend physically for me to be told in person that I would not be seen in respect of my query."

15. Frankly, I do not accept that evidence as truthful. The respondent has not cast any doubt on the authenticity of the email from the Ethiopian Embassy and I find that it is not credible that such an email would have been sent to the appellant's representatives with the sole intention of forcing the appellant to travel from Leeds to London simply in order to be told to go away again. There is no reason at all to suppose that the consular service of a sovereign state would act in such a manner. There are photographs annexed to the appellant's statement showing him outside the Ethiopian Embassy. In my opinion, that is as far as the appellant got on 31 March 2015 and I find that he has fabricated his account of having been sent away from the embassy by a member of the reception staff. There is an email from the representative to the embassy dated 10 April 2015 complaining of the alleged treatment of their client but, significantly, no reply has been disclosed. I have no evidence from the representatives to confirm there had been no reply and, in light of the embassy's response of 26 March 2015, I simply do not accept there would have been no reply to the representative's later email. Alternatively, a reply has been received but has not been disclosed to the Upper Tribunal.

16. I find, therefore, that the appellant has sought to deceive the Tribunal as regards the efforts he made either to establish his Ethiopian nationality or to clear his passage to Ethiopia, a country in which he has spent a large part of his life. One has to question the Appellant's motives for seeking to

deceive the Tribunal in this manner. I consider it reasonably likely that he has done so because he is an Ethiopian citizen who wishes to conceal that fact. In any event, the appellant has failed to establish that he would not be admitted to Ethiopia either as a citizen of that country or some other status (see the quotation in Dr Seddon's report above). At [5.3], Dr Seddon also noted that:

> "If [the appellant] were to be allowed to return to Ethiopia, he would be obliged to [go] through a lengthy and difficult procedure to obtain the necessary documentation and eventually permission to reside as a non-national in Ethiopia. He will also, even if he were to succeed in obtaining residence without citizenship or citizenship, be at a serious disadvantage in Ethiopia owing to the fact that he has not lived there since 2007 (eight years) and would have no close family to provide security and support. Living conditions are not easy and unemployment is rife; mere survival would be extremely difficult for a young male on his own without family or friends."

17. I consider this to be another example of Dr Seddon slipping into the role of advocate, rather than expert witness. His assertions that the appellant would be at "serious disadvantage" because he has not lived in Ethiopia for a number of years is unsupported by any evidence at all as is his assessment that "mere survival would be extremely difficult for a single young male"; Dr Seddon ignores the fact that the appellant is familiar with Ethiopian society, speaks languages which are understood in that country and is a healthy young man apparently able to find work and support himself. In the light of the appellant's conduct as regards the Ethiopian Embassy, I consider it likely that he is also in contact with his aunt and uncle and possibly other family members still resident in Ethiopia who would be able to assist him. I do not accept his assertion that he has lost touch with his family abroad.

18. Finally, Dr Seddon has not explained why the appellant should not be "obliged to go through a lengthy and difficult procedure to obtain the necessary documentation" when the only alternative is for him to be granted refugee status in the United Kingdom; there is no reason to think that undertaking "lengthy and difficult procedures" would infringe his human rights or prove anything more than an inconvenience. It is unfortunate that the appellant has chosen not even to attempt to cross the first hurdle, namely explaining his situation to the officers of the Ethiopian Embassy in London. Having considered all the evidence carefully, I find that the appellant is likely to be an Ethiopian citizen who has sought to conceal that fact and that he has failed to discharge the obligations on him (outlined in *ST*) to establish, whilst still resident in the United Kingdom, a right to return to live in Ethiopia. He is not at risk on return to Ethiopia either on account of his religion, ethnicity or for any other reason. In the circumstances, the appellant's asylum and human rights (Articles 2/3) appeals are dismissed.

Notice of Decision

This appeal is dismissed on asylum grounds.

This appeal is dismissed on human rights grounds.

This appellant is not entitled to a grant of humanitarian protection.

No anonymity direction is made.

Signed Date 10 December 2015

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 December 2015

Upper Tribunal Judge Clive Lane