



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/10284/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke**

**Decision & Reasons  
Promulgated  
On 15<sup>th</sup> June 2017**

**On 2<sup>nd</sup> June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**GM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Ahmed of Fountain Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge J Robertson of the First-tier Tribunal (the FtT) promulgated on 21<sup>st</sup> December 2016.
2. The Appellant claims to be a male citizen of Eritrea born 1<sup>st</sup> January 1991. He entered the United Kingdom illegally on 27<sup>th</sup> June 2013 and subsequently claimed asylum.

3. On 12<sup>th</sup> September 2016 the Respondent refused the Appellant's asylum and human rights claim. The Appellant appealed to the FtT. The appeal was heard on 25<sup>th</sup> November 2016 and dismissed on all grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was granted by Judge E S Martins of the FtT and I set out below in part the grant of permission which summarises the grounds upon which permission was sought;
  2. The grounds assert that the judge erred materially in his approach to credibility and to risk on return. It is submitted that the judge overlooked the Country of Origin Information Report regarding the language of the Appellant and failed to take into account that he attended the Ethiopian Embassy in London and tried all means to ascertain his nationality. It is further submitted that there is no analysis of the objective evidence, or of the Appellant or that of a witness, who has been found credible by the SSHD.
  3. In respect of risk on return the Appellant argues that the judge failed to conclude on the matter that the Appellant left Eritrea illegally and would therefore face persecution at the hands of the Eritrean authorities for having left the country illegally.
  4. The assertions made in the grounds are evident on the face of the decision and disclose an arguable error of law.
  5. An arguable error of law is shown.
5. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the FtT directed itself appropriately. It was however conceded by the author of the rule 24 response, that the Respondent had not seen the FtT decision, as it was not attached to the grant of permission.
6. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

### **The Upper Tribunal Hearing**

7. Mr Bates conceded that the FtT had materially erred in law as set out in the grounds, and the grant of permission. Mr Bates accepted that the FtT decision was not adequately reasoned. It was not clear whether the FtT accepted the Appellant's claimed nationality, as paragraph 22 was unclear. It was accepted that the FtT had not made any findings upon the evidence of the Appellant's witness.
8. Both representatives suggested that the appropriate course was to set aside the FtT decision with no findings preserved, and remit the appeal back to the FtT to be heard afresh.

## **My Conclusions and Reasons**

9. As announced at the hearing, I conclude that the FtT materially erred in law. This has been conceded by the Respondent. I find the error to be material.
10. Evidence was given to the FtT by a witness. The evidence is summarised at paragraph 10, but there is no analysis of that evidence, and no findings are made upon the evidence. The witness was an Eritrean who had been granted refugee status by the Respondent. The failure to make findings upon material evidence is an error of law.
11. It is not entirely clear whether the FtT found the Appellant to be Eritrean. At paragraph 22 the FtT concludes;

“I find that the Appellant has not discharged the burden of proof and he has failed to satisfy me, even to the lower standard of proof, that he is an Eritrean national with a well-founded fear of persecution”.
12. It is clear from the above that the FtT does not accept that the Appellant has a well-founded fear of persecution, but it is not absolutely clear whether there is a finding that he is an Eritrean national even though there is no well-founded fear of persecution.
13. The FtT at paragraph 16 did not accept that the Appellant’s use of Amharic at his interview to be conclusive of nationality and at paragraph 17 noted that the Appellant answered many questions about Assab without difficulty, and found that general knowledge alone could not determine nationality.
14. This was an appeal involving disputed nationality. There needed to be a clear finding on nationality with adequate and sustainable reasons given for that finding, and in my view that is lacking in this case.
15. Only after a finding on nationality has been made, can there be an adequate assessment as to risk on return.
16. For the above reasons, the FtT materially erred in law and the decision is set aside with no findings preserved.
17. Having considered paragraph 7 of the Senior President’s Practice Statements, I find it appropriate to remit this appeal to the FtT to be heard afresh. This is because the nature and extent of judicial fact-finding which is necessary, means that it is more appropriate for this to be carried out by the FtT rather than the Upper Tribunal.
18. The appeal will be heard by the FtT at the Birmingham Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FtT Judge other than Judge J Robertson.

## **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

## **Anonymity**

I make an anonymity order pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 as this appeal involves considering a claim for international protection. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

6<sup>th</sup> June 2017

Deputy Upper Tribunal Judge M A Hall

## **TO THE RESPONDENT FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date

6<sup>th</sup> June 2017

Deputy Upper Tribunal Judge M A Hall