



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07244/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 2 May 2018

Decision and Reasons Promulgated
On 14 May 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M G
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Richard Selway, solicitor with Brar & Co, Solicitors
For the respondent: Mr Myroslaw Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him refugee protection, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.
2. The appellant's nationality is in issue: he claimed to be a citizen of Eritrea but the respondent considered him to be entitled to Ethiopian citizenship, if not already registered as an Ethiopian citizen.

Background

3. The appellant says he was born in October 2000 in Eritrea to parents both of whom were Eritrean citizens, but that he and his mother left Eritrea for Ethiopia in 2006, when he was 6 years old. The appellant could not remember much about Eritrea, not even what his father's police uniform looked like. He does not remember why they left, but his mother told him later that the appellant's father was having problems in his employment as a police officer in Eritrea. His father remained behind and the appellant was told by relatives that he died in 2008, when the appellant was 8 years old.
4. In Ethiopia, the appellant and his mother lived for the next 6 years with a paternal or maternal uncle. The appellant said it was difficult for him to go to school in Ethiopia, but that he was able to study from grades 1-5 in a fee-paying Ethiopian school, his mother working as a baker and paying their Ethiopian landlord, who in turn paid the school fees. The landlord pretended to be the appellant's father in order for him to have education.
5. The appellant's evidence was that his grandmother still lived in Eritrea and that his mother was in contact with her. The appellant claimed to be at risk of conscription in Eritrea if returned there now.
6. Neither the appellant nor his mother at any time applied for, or asserted, Ethiopian citizenship. The appellant's evidence was that Tigrinya, the principal language of Eritrea, was the language spoken in his home, and he gave evidence in that language. The appellant said he spoke some Amharic, but was more comfortable in Tigrinya.
7. In November 2014, when the appellant was 14 years old, the appellant's mother told him to leave Ethiopia with his uncle and he travelled first to Sudan for 2 months, then for over a year in Libya, where his uncle died in a car accident. The appellant, still a minor, travelled on to Italy, where he was fingerprinted on 28 May 2016, and on through France to the United Kingdom. He had no contact with his mother after leaving Ethiopia, on his account.
8. The appellant stated that he entered the United Kingdom clandestinely on 27 January 2017. He was 16 years old and claimed asylum based on the risk to him of forced military service in Eritrea. On 21 July 2017 the respondent refused international protection, granting discretionary leave until the appellant would reach the age of 17½.

9. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

10. The First-tier Tribunal considered the appeal and delivered its decision on 4 September 2017. The appellant was still 16 years old. The Judge took into account the appellant's young age and the lower standard of proof applicable in international protection appeals. He accepted that the appellant's first language was Tigrinya, the principal language in Eritrea. He had not had any contact with his mother since leaving Ethiopia, which the Judge considered damaged his credibility, as did the appellant's failure to access protection in Italy or France en route to the United Kingdom.

11. The Judge did not treat the appellant's language as determinative of his nationality. He noted that the appellant's evidence about Eritrea was vague, but had regard to the fact that he left Eritrea aged 6. He noted evidence that the appellant was the only one of 3 brothers and sisters who received education in Ethiopia, and that his landlord pretended to be the appellant's father in order to obtain paid education for him.

12. The Judge found that the nationality information in the respondent's refusal letter indicated that he and his mother could and should have accessed Ethiopian nationality while they were living there. The Judge made a comprehensive negative credibility finding and dismissed the appeal.

13. The appellant appealed to the Upper Tribunal.

Permission to appeal

14. The grounds of appeal contained a challenge to the Judge's reasoning, arguing that immaterial matters had been taken into account when assessing the appellant's evidence and in particular, that there was no finding whether he had left Eritrea legally or not.

15. Permission to appeal was granted on the basis that, in particular, the Judge's reasoning on the acquisition of Ethiopian nationality was arguably erroneous and that the failure to contact his mother had been given disproportionate weight and insufficient weight given to his age at the various material times, including at the date of hearing.

Rule 24 Reply

16. The respondent in his Rule 24 Reply asserted that the First-tier Tribunal had directed itself appropriately, that the findings of fact were adequate, and adequately reasoned, and that the First-tier Tribunal had been entitled to find that the appellant was not an Eritrean citizen, for the reasons given at page 4 of the Judge's decision.

17. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

18. At the hearing, Mr Diwnycz for the respondent reminded me that the respondent had sought to withdraw and remake his decision, but that the First-tier Tribunal had refused permission for withdrawal, and the respondent had not challenged that ruling. The respondent was not now seeking to withdraw the decision.

Discussion

19. The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 at paragraph 17(2) requires the First-tier Tribunal to treat an appeal as withdrawn where the respondent has either given written or oral notice of withdrawal, specifying reasons, unless there are good reasons for refusing to accept a withdrawal. Page 2 of the decision (there are no paragraph numbers) applies that test correctly. The respondent was not seeking to alter or review her decision, but rather to give different reasons with the outcome (apparently prejudged at the date of hearing) being the same. The respondent, properly in my view, has not challenged or renewed that application to withdraw and has made no further decision in relation to this appellant.
20. The *Tribunals Judiciary (Immigration and Asylum Chambers) Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance* was not expressly applied in this decision. However, I can discern no matter within that guidance which would have affected the outcome of the appeal.
21. There is, however, unarguably an error in the Tribunal's approach to the question of Ethiopian nationality. Reference is made to the excerpt of the Ethiopian Nationality Proclamation No.378/2003, arts 4, 5 and 9 of which (if complete) appear at paragraph 13 of the refusal letter. The Judge did not address his mind to the analysis of the Upper Tribunal in *KK and others* (Nationality: North Korea) Korea CG [2011] UKUT 92 (IAC) as to nationality which a person 'has' and nationality which they may be able to acquire.
22. In addition, in concluding that the appellant's credibility was diminished by his failure to claim Ethiopian nationality, the Judge failed to engage with the terms of the Proclamation as therein set out, in particular with the requirement that naturalisation applications can be made only by adults (which while in Ethiopia, this appellant never was) or as the child of a naturalised parent, with the consent of *both* parents, where the child can show that he has been released from his previous nationality or has the possibility of obtaining such release. The evidence in this case as set out in the decision may, or may not meet those requirements, but clear reasoning was required for a finding either way.
23. The respondent has not disputed that the appellant left Eritrea when he was 6 years old to live in Ethiopia. The Upper Tribunal in *MST and Others* (national service - risk categories) Eritrea CG [2016] UKUT 443 (IAC) held that

“... 10. Accordingly, a person whose asylum claim has not been found credible, but who is able to satisfy a decision-maker (i) that he or she left illegally, and (ii) that he or she is of or

approaching draft age, is likely to be perceived on return as a draft evader or deserter from national service and as a result face a real risk of persecution or serious harm."

24. The failure of the First-tier Tribunal to make any finding as to whether the appellant left Eritrea unlawfully and/or whether on return he was liable to military service is a material error of law and there is no alternative but to set the decision aside and direct that it be remade.

DECISION

25. For the foregoing reasons, my decision is as follows:
The making of the previous decision involved the making of no error on a point of law I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Date: 9 May 2018

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson