



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07118/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 January 2020**

**Decision & Reasons Promulgated
On 24 January 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SIYOUM [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Khan, instructed by Parker, Rhodes Hickmotts

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 7 October 1991 and claims to be a citizen of Eritrea. By a decision promulgated on 12 June 2019, Upper Tribunal Judge Plimmer found that the First-tier Tribunal had erred in law and set aside its decision. She found that the Secretary of State had established two grounds of appeal, namely that the judge had applied the incorrect standard of proof when determining whether or not the appellant is entitled to Israeli citizenship [4] and had allowed the appeal without considering 'the absence of any attempt on the part of the appellant to confirm with the Israeli embassy that he is not an Israeli citizen and cannot be removed there.'

2. Following the making of a transfer order, the resumed hearing took place before me at Bradford on 13 January 2020. I heard evidence from the appellant who spoke Tigrinya and gave his evidence with the assistance of an interpreter. The appellant explained that he had visited the Israeli Embassy twice, most recently on 11 September 2019. He told an official at the embassy that he had resided in Israel and asked for proof of that residence. His request was denied. The appellant explained that his passport remained with the Home Office. The appellant says that he was informed by the official that he would not be given any 'written information' because he was 'an illegal.'
3. The appellant's evidence seems to me to be plausible. I was not asked by Mr Veety, who appeared for the Secretary of State, to find that he had not attended the Israeli Embassy. I accept that the account he gave me was true and accurate.
4. The issue in this case is a narrow one. As Upper Tribunal Judge Plimmer recorded [3] the Secretary of State has accepted that the appellant is a citizen of Eritrea. In particular, he accepts that the appellant was born in Eritrea and, if returned to that country, would face a real risk of persecution. It is the Secretary of State's position that the appellant is entitled to the surrogate protection of Israel because he is an Israeli citizen. As a consequence, he is not entitled to refugee status.
5. The problem in the case arises from the passport document which the appellant brought with him into the United Kingdom and which is currently in possession of the Secretary of State. The Secretary of State takes the view that this document is a genuine Israeli passport. There is before the Tribunal an email correspondence between the Secretary of State and the Israeli Embassy in London. The passport itself has not been examined by Israeli officials although details of it have been provided. On the basis of those details (presumably, the passport number in particular) an Israeli official has stated that the passport is likely to be genuine. In addition, one of the Secretary of State's own document examiners has concluded that the document is genuine and that the photograph of the appellant in the passport was placed there at the time the document was issued and not subsequently. The problem for the Secretary of State is that his assertion that the passport shows that the appellant is an Israeli citizen, in addition to being an Eritrean citizen, appears to be contradicted on the face of the passport itself; the appellant's place of birth is shown as Israel. Both the appellant and the Secretary of State agree that the appellant was not born in Israel, but in Eritrea. The appellant contends that the incorrect place of birth supports his claim that the passport is not genuine that he purchased it as a forgery.
6. The question as to whether the appellant is, in addition to being a citizen of Eritrea, also a citizen of Israel must be tested on the evidence on the standard of the balance of probabilities. On the one hand, we have the evidence of the Israeli official that the passport is genuine. However, that opinion has been reached without sight of the original document. In

addition, there is the document verification report to which weight should be given as expert opinion evidence although it does not seem that the expert who examined the passport had specific knowledge of Israeli passports; rather, his evidence is based upon his knowledge of passports generally and in identifying those which have suffered interference and amendment after they have been (genuinely) issued. On the other hand, there is the patently false statement in the passport that the appellant was born in Israel which neither of the parties believes to be the case. In addition, the fact that the appellant speaks Tigrinya and does not speak Hebrew suggests strongly that he was not born in Israel.

7. The evidence of the document expert can be reconciled with that of the appellant. The passport may be a genuine document which has been improperly issued to the appellant by an official Israeli state agency. Such an event is not wholly implausible; although I have no evidence specific to Israel, I am aware that such practices do occur in passport offices operated by other governments. Having said that, it is striking that both the document expert (who examined the passport) and the Israeli official (who did not) both agree that it is genuine.
8. I am, however, drawn back to the fact that both parties unequivocally agree that the passport contains false details. That it does heavily supports the appellant's contention that the document is not genuine. Moreover, it is possible that the appellant might return to Israel and gain entry using the passport. However, the fact that he might be able to enter does not mean that he has any right to reside in Israel. I was provided with no information regarding Israeli nationality law though I find that it is likely that, given the circumstances surrounding the foundation of the state of Israel, nationality may extend in some circumstances to those born outside the country's borders. However, I am reminded that the appellant will be a refugee in the United Kingdom if he cannot return safely to his country of nationality; the fact that he may be able to gain entry to Israel does not mean that he is a citizen of the country. Having considered the evidence very carefully, my misgivings regarding the passport lead me to conclude that the appellant's possession of the document does not establish that he is a dual citizen of both Israel and Eritrea. Since it is not been proved that he is a citizen of Israel, then he would be returned to Eritrea where the Secretary of State accepts that he would be at real risk. I have concluded that he is a refugee. I make no firm finding as to the manner in which the passport document came into the appellant's possession but I do find that the Secretary of State has failed to prove, on the balance of probabilities, that the appellant is, as respondent asserts, an Israeli citizen. It follows that his appeal should be allowed

Notice of Decision

The appellant's appeal against the decision of the respondent dated 29 May 2018 is allowed on asylum and human rights (Article 3 ECHR) grounds.

Signed

Date 20 January 2020

Upper Tribunal Judge Lane