



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004751  
First-tier Tribunal No: PA/50654/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

22<sup>nd</sup> January 2024

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**  
**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**S H (ETHIOPIA)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Mark Schwenk of Counsel, instructed by Shawstone Associates

For the Respondent: Mr Esen Tufan, a Senior Home Office Presenting Officer

**Heard at Field House on 11 December 2023**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials S H. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

**Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### **Introduction**

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 20 January 2023 to refuse him international protection or leave to remain on human rights grounds.
2. The appellant's nationality is disputed: the respondent considers him to be an Ethiopian citizen, but he asserts that he is a citizen of Eritrea.
3. **Mode of hearing.** The hearing today took place face to face.
4. For the reasons set out in this decision, I have come to the conclusion that this appeal must be dismissed.

### **Background**

5. The appellant accepts that he was educated in Ethiopia and lived there until he was 12 years old. He claims to have been deported to Eritrea in December 1999, but to have left Eritrea and travelled to Sudan in November 2000, returning to Eritrea in 2005, where he spent a few months, during which time his father died.
6. He then left again in October 2005, returning to Sudan, and on to Libya from 2007-2010, arriving in the UK clandestinely on 26 February 2013 and claiming asylum on arrival. He had a previous asylum appeal on which he was appeal rights exhausted on 19 August 2015. That is the *Devaseelan* starting point in this appeal.
7. On 2 March 2022 the appellant made further submissions, and the respondent's decision on 18 January 2023 responding to those submissions is the decision under challenge in this appeal.

### **2015 decision (First-tier Judge Devittie)**

8. In his decision promulgated on 8 July 2015, First-tier Judge Devittie found that the appellant was neither an Eritrean citizen nor a Pentecostal Christian. He found the appellant's account to be lacking in both credibility and obvious corroborative documents. There were 'a number of unsatisfactory features' in the claim, and the religious element of the account was 'wholly contrived'. That decision was upheld by the Upper Tribunal.

### **First-tier Tribunal decision**

9. First-tier Judge Taylor in September 2023 dismissed the appeal principally because he found the appellant's evidence of a visit to the Ethiopian Embassy not to be new evidence, since he had been to the Embassy

previously, and presented similar evidence to the 2015 hearing, which was rejected. The appellant had submitted a birth certificate and supporting statements, to show that he was born in Eritrea. The First-tier Judge rejected the birth certificate and supporting documents as unreliable (see *Tanveer Ahmed*).

10. He also did not attach any determinative weight to a letter from the Lambeth Eritrean Centre, and expert report by Mr David Seddon (dated 13 June 2021), and some out of date letters from a pastor whose church the appellant no longer attended.
11. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

12. Permission to appeal to the Upper Tribunal was granted on the following basis:

“...2.The grounds assert that the Judge erred in deciding that the evidence of the appellant’s visit to the Ethiopian Embassy in 2023 was not new, and in failing to apply country guidance case of *ST (ethnic Eritrean – nationality – return) Ethiopia CG [2-11] UKUT 252 (IAC)*.

3. It is apparent from the previous determination in 2015 that the Judge who heard that appeal, while recording that the appellant had given oral evidence about having visited the Ethiopian Embassy, no findings were made about that evidence. It is arguable that the Judge in the present appeal erred in finding that the evidence of the 2023 visit to the Embassy was not new, given that there had been no previous judicial finding in respect of it, that it post-dated the 2015 determination and was supported by documentary evidence.

4. Permission to appeal on both grounds is granted. ”

### **Rule 24 Reply**

13. The respondent filed a Rule 24 Reply, arguing that there was no reason to believe that the First-tier Judge in the 2015 decision had not considered the appellant’s oral evidence about his previous visit to the Ethiopian Embassy. The First-tier Tribunal in the present decision had given cogent reasons to reject the documentary evidence about the 2023 visit ‘clearly finding it to be unreliable and/or incredibly obtained’. The First-tier Tribunal’s approach to the evidence was understandable. Indeed, it was difficult to see how, on the evidence, the First-tier Tribunal could have been satisfied that the appellant had provided to the Ethiopian Embassy all the documents at his disposal and an accurate narrative: see *ST (Eritrea)*. Failure to mention *ST (Eritrea)* was immaterial, as the outcome would be the same.
14. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

15. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal and in addition to the respondent's Rule 24 Reply and a skeleton argument on behalf of the appellant.
16. Mr Schwenk's skeleton argument sets out the new documents and disagrees with the First-tier Tribunal's handling of them. His argument is set out concisely in the concluding paragraph [29]:

"29. The Appellant respectfully submits that the above, taken individually or cumulatively discloses material errors of law in the decision of FTTJ Taylor. The Judge has treated the fresh evidence before him as though it had been considered before and has done little more than reject it out of hand for that reason. Moreover, the Judge has failed to identify and apply country guidance, binding upon him, to that evidence and has failed to deal with the significance, in the context of that country guidance of the fresh evidence of the embassy visit by the Appellant and his witness. The Appellant requests that the Upper Tribunal set aside the infected findings of FTTJ Taylor and remit the matter to the First-Tier Tribunal for rehearing."

## Conclusions

17. I begin by considering what assistance *ST (Eritrea)* can give the appellant in the present appeal. It is not a case about establishing Eritrean citizenship but about deprivation of Ethiopian nationality. This appellant does not claim to have ever held Ethiopian citizenship, but his account has not been believed now by two First-tier Judges.
18. The process which the appellant went through, both in 2015 (evidenced orally only) and in 2023, consisted of appearing at the Ethiopian Embassy and telling them that he had no documents to prove his Ethiopian citizenship. There are photographs and documents to confirm that in 2023, he did go and was rejected. It is hardly surprising that the Ethiopian Embassy were unable to assist him. With or without the application of the guidance in *ST (Eritrea)* that evidence, and its rejection, were unarguably immaterial to the outcome of the appeal.
19. The First-tier Judge's treatment of the letters from Pastor Fasil Bellete and the Lambeth Eritrean Community was rational. The appellant no longer attends the Pentecostal Bread of Life Church headed by Pastor Bellete and was vague about the church he attends instead. The letters from Pastor Bellete on 13 May 2019, 6 March 2020 and 25 February 2022 are not current, and the weight given to these documents was open to the Judge.
20. The report of David Seddon dated 13 June 2021 described the birth certificate acquired by the appellant's uncle from the Eritrean authorities in April 2001, some 20 years earlier. There were some oddities about the document, and Mr Seddon stopped short of saying it was authentic. The Judge was entitled to have regard to that.

21. Overall, the grounds of appeal are really no more than a challenge to the First-tier Judge's findings of fact and credibility. I remind myself that an appellate Court or Tribunal may not interfere with the Judge's findings of fact, unless such finding is 'rationally insupportable': see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed.
22. The First-tier Judge's decision is properly, intelligibly and adequately reasoned and the conclusions he reached were open to him, having regard to the 2015 decision and the 'new' evidence adduced for the 2023 hearing.
23. I uphold the First-tier Judge's decision and dismiss the appeal.

### **Notice of Decision**

24. 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 do not set aside the decision but order that it shall stand.

**Judith A J C Gleeson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 14 January 2024**