



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00606/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 25th September 2017

**Decision & Reasons
Promulgated
On 17th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**HMA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Hashmi of Counsel instructed by Halliday Reeves Law Firm

For the Respondent: Mr Diwncyz, Home Office Presenting Officer

DETERMINATION AND REASONS.

THE RESUMED HEARING

1. This matter first came before Judge Bagral. In a comprehensive determination, she concluded that there was no merit in the appellant's challenge to the credibility findings of the original Immigration Judge, Judge Walker. Those findings therefore stand.

2. Judge Bagral concluded however that he had erred in his consideration of whether the appellant would be at risk on return to Eritrea irrespective of whether the story of his escape from there was true. Her determination is appended to this.
3. It was transferred to be heard by a judge other than Judge Bagral and hence came before me on 25th September 2017.
4. At the commencement of the hearing it transpired that the Tribunal had booked the wrong interpreter. The appellant had requested a Tigre interpreter but a Tigrinya interpreter was booked instead. He confirmed however that Arabic was his second tongue and that he was happy to give his evidence. I noted that his original interview had been conducted in Arabic and ensured that the appellant and the interpreter understood each other at all times.
5. The sole issue before me therefore is the risk on return of an Eritrean national of draft age.
6. The appellant produced a supplementary statement for this hearing. He confirmed that he did not attend school in Eritrea but learned to read and write at the local mosque. He helped to take care of the animals on his parents' farm.
7. He left Eritrea in 2007 when he was 18 years old after his brother had been called up into national service. He went to the border with Sudan, first by walking and then on a donkey to a place called Alafa, and from there to Golsa in Sudan. Under cross-examination he confirmed that he did not go through any border post and walked through the border through a rural area which was unfenced.
8. The appellant returned to Eritrea in February 2014. In his statement he said that it was because his mother missed him and she had a girl that the families wanted him to marry. Under cross-examination he said that he returned because his mother was unwell. He described the marriage ceremony as being very basic with only close family members and no official record taken. His father-in-law read the Koran.
9. Mr Diwncyz asked him whether he was aware of any call-up papers being sent to him during his seven year absence from Eritrea and the appellant said that he was not sure. He said that after his return in February 2014 the authorities came looking for him because he had previously exited Eritrea illegally.

Findings and Conclusions

10. The appellant comes to the Tribunal with a record of having not told the truth about the authorities' interest in him in Eritrea. Further discrepancies emerged during his evidence today, in relation to his mother.

11. I conclude that the appellant returned to Eritrea for the reasons which he set out in his statement, namely that life was very hard for him in the Sudan and he wanted to return to visit his mother and to marry the girl of her choice.
12. Illegal exit cannot be assumed in this case, because the appellant has not been found to be credible. Mr Diwncyz asked me to consider whether it was reasonably likely that the appellant could have walked across the border into Sudan on three occasions and whether it really was as porous as the appellant claimed. However, it is quite clear that very many asylum seekers from Eritrea do cross this border and there is no real basis to doubt the appellant's claim that he was able to do so.
13. In MO (illegal exit – risk on return) Eritrea CG [2011] UKUT 00190 (IAC) the Tribunal reaffirmed the position set out in MA and held that in fact there were a number of indications that it has become more difficult for Eritreans to obtain lawful exit from Eritrea. The potential categories of lawful exit are narrowly drawn to two medical categories and those who are either highly trusted Government officials or their families, or who are members of ministerial staff recommended by the Department to attend studies abroad.
14. The Tribunal held that whilst illegal exit cannot be assumed it may be that inferences can be drawn from an appellant's level of education or skills profile as to whether legal exit was feasible.
15. I accept that this appellant has a low-level of educational attainment. It is most unlikely that he could ever have been in Government service. His account of working on the family farm in Eritrea and then working in the Sudan in farming looking after animals is wholly consistent with everything that is known about him. There is no reasonable degree of likelihood that the appellant falls within the limited category of Eritreans who could be issued with an exit visa.
16. The appellant would therefore be returning to Eritrea as a person who would be perceived to be a draft evader and therefore facing a real risk of persecution as well as treatment contrary to Article 3 of the ECHR.

Notice of Decision

17. The original judge erred in law. His decision has been set aside. It is remade as follows. The appellant's appeal is allowed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Deborah Taylor

Deputy Upper Tribunal Judge Taylor.
October 2017

Date 16