



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/05854/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 30 January 2018**

**Decision & Reasons  
Promulgated  
on 01 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

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

Appellant

**and**

**AMANUEL TEWOLDE BERHAN**

Respondent

**Representation:**

For the Appellant: Mrs M O'Brien, Senior Home Office Presenting Officer  
For the Respondent: Mr A Bradley, of Petr G Farrell, Solicitors

**DETERMINATION AND REASONS**

1. This decision refers to the appellant as the SSHD and to the respondent as the claimant.
2. First-tier Tribunal Judge Fox allowed the claimant's appeal by a decision promulgated on 4 October 2017.
3. The SSHD's grounds of appeal are stated in her application dated 1 November 2017.

The judge allows the appeal "under the 1951 Convention" [in his] summary of decision. This is in conflict with his reasoned conclusion at paragraph 38. No reason is given for

allowing the appeal on asylum grounds; in fact, reasons are given for dismissing the appeal on that basis.

The judge further allows the appeal under articles 2 and 3 of the 1950 Convention and also under the immigration rules – humanitarian protection ... inadequate reasons are given for these conclusions given the negative findings in respect of asylum.

A key issue in the SSHD's refusal was the claimant's nationality. Paragraphs 19 - 27 of the refusal letter are taken up with a fully reasoned challenge to the claimant's claim to be Eritrean. The judge never resolves this issue. He finds at paragraph 20 that "not too much store can be placed on this attempt at discharging the onus placed upon the claimant by *YL (Eritrea) CG [2003] UKAIT 00016*". He nevertheless finds at paragraph 30 that the claimant "has demonstrated he is likely to be an Eritrean" without any reasoning and without engaging with the challenge set out in the refusal letter.

4. The two questions raised by the grounds and submissions are whether the judge inadvertently allowed the appeal, when his findings dictated the opposite; and whether he gave legally adequate reasons for finding in favour of the claimant on the question of nationality.
5. On the first question, there is no denying that the decision is muddled; but I am persuaded by Mr Bradley's submissions that it is possible on close reading to see what the judge meant.
6. Clarity is not aided by dealing with the two following matters in the same paragraph, over and over again, at 30 – 32; but the judge does conclude that the claim to be a Pentecostal Christian is false, and the claim to be Eritrean is true. He is satisfied that the claimant is Eritrean, is liable to conscription, and left the country illegally, and so is at risk of persecution. The judge's positive conclusions within paragraphs 30 – 32 are consistent with his "summary of decisions".
7. Paragraph 38 does not contain any reasons, but states conclusions, which are erroneously phrased in the negative.
8. On the second question, Mrs O'Brien made these points:
  - (i) The judge disbelieved the core claim to be a Pentecostalist for good reasons, and did not explain why that did not carry into the rest of the case.
  - (ii) The claimant's general credibility was poor.
  - (iii) The challenge on nationality was strongly made in the refusal decision and, contrary to what the judge said, was maintained in the FtT.
  - (iv) The judge rightly found at paragraph 20 that the claimant's efforts to show lack of Ethiopian nationality through a letter to the Embassy carried little weight.
  - (v) An explanation for the nationality finding was entirely lacking.
9. The points made in response for the claimant were:
  - (i) Reasons were given, if briefly, at paragraphs 30 - 32 and 36.

- (ii) The judge noted the absence of challenge from the respondent by way of cross-examination or submissions at paragraphs 17, 18, 19 and 20.
  - (iii) Further reasons were to be found in those paragraphs: 18, claimant illiterate and impoverished, likely not to be permitted legal egress from Eritrea; 19, claimant's age and health such as to be eligible for conscription; 20, claimant made reasonable enquiries about nationality, given not much but, by implication, *some store*.
  - (iv) Those reasons were given by reference to the evidence before the judge, which included the claimant's statement and background evidence to support his claim.
  - (v) The claimant's statement included his response to the refusal decision on various matters, including the languages he speaks.
  - (vi) The background evidence supported his account of his language abilities, showing that Amharic was widely spoken in his area, and explaining his slight knowledge of Tigrinya.
  - (vii) The decision was to be read as a whole and in context of evidence to which the judge did not have to refer in detail but which he was entitled to accept.
  - (viii) The respondent was seeking "reasons for reasons".
10. In answer to the second question, the decision is a legally adequate explanation to the SSHD of why the judge came down on the side he did.
  11. The judge had the advantage of hearing the claimant give his evidence, from which he formed the view that while he was purporting to be a Pentecostalist in a misguided effort to improve his case, he was nevertheless reliable about his nationality.
  12. Any misunderstanding by the judge of the extent to which the SSHD maintained the dispute on nationality is not reflected in the grounds of appeal to the UT. The decision must be taken as an accurate description of how that issue unfolded at the hearing.
  13. While it is difficult to read into paragraphs 30 - 32 much more than statements of conclusions, rather than reasons, the submissions that the decision is to be read as a whole and in context are well-founded. As well as having the advantage of assessing the claimant's oral evidence directly and seeing it go largely unchallenged, the judge had supporting evidence which he is to be presumed to have taken into account and which he was entitled to accept.
  14. The decision of the First-tier Tribunal shall stand.
  15. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

31 January 2018  
Upper Tribunal Judge Macleman