



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

Appeal Number: PA/00520/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 14 June 2016**

**Decision & Reasons Promulgated
On 11 July 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz, a Senior Home Office Presenting Officer
For the Respondent: Mr Siddique, Parker Rhodes Hickmotts, Solicitors

DECISION AND REASONS

1. The appellant, AA, is a male citizen of Eritrea who was born in 1989. He appealed against a decision of the respondent to deport him to Eritrea. The First-tier Tribunal (Judge Shimmin) in a decision promulgated on 9 March 2016 allowed the appeal on human rights grounds (Articles 3 and 4

ECHR) but dismissed the appeal on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. The grounds of appeal argue that the judge failed to follow *MA (draft evaders - illegal departures - risk) Eritrea CG* [2007] UKAIT 00059 and *MO (illegal exit - risk on return) Eritrea CG* [2011] UKUT 00190 (IAC). The grounds record that the judge found that the appellant was not a credible witness and that the judge had failed to take into account the appellant's father who was, on the appellant's own account, a government supporter [22]. It was likely, in those circumstances, that the appellant had not left Eritrea illegally.
3. I find that the appeal should be dismissed. Mr Diwnycz, for the Secretary of State, confirmed that there was no challenge in the grounds of appeal to the judge's finding that, in addition to facing a real risk of ill-treatment contrary to Article 3 ECHR, the appeal had also been allowed on the discrete ground that the appellant's return to Eritrea would breach Article 4 (prohibition against slavery and forced labour). The judge had considered Article 4 in the context of the government service which the appellant was reasonably likely to be forced to engage indefinitely upon his return to Eritrea. The judge recorded [67] that Article 4.1.(b) excludes forced or compulsory labour "of a military character" but found that "conscriptio[n] [in Eritrea] imposed by the regime ... is infinite and arbitrary and goes beyond the service of a military character". The judge noted that deployment of those conscripted may well include agricultural, construction, teaching and civil service work in addition to work of a military nature [68].
4. In a Rule 25 statement, the appellant's solicitors point out that the grounds of appeal do not accurately summarise the appellant's evidence. At [22], the judge recorded that the appellant's father had been a government supporter but had "become disillusioned". Further, "in June 2002 the appellant's father was arrested and his whereabouts are not known". Therefore, to describe the appellant's father in the grounds of appeal as a "government supporter" is not accurate. I agree. Indeed, the entire grounds of appeal are predicated on the assumption that the appellant, the son of a government supporter, may not have left Eritrea illegally and therefore will not face a real risk of ill-treatment upon return. First, as I have said, that is not an accurate statement of the facts as found by the judge who, notwithstanding his rejection of large parts of the appellant's account, did not act irrationally or perversely by concluding that the appellant had left Eritrea illegally. Secondly, as Mr Diwnycz acknowledged at the Upper Tribunal hearing, the grounds of appeal challenge only the appeal allowed on Article 3 ECHR grounds. No mention is made in the grounds of appeal to Article 4 ECHR save, at the beginning of the grounds, to record that the judge had allowed the appeal on both Article 3 and Article 4 grounds. The judge dealt with Article 4 separately from the remainder of the appellant's claim whilst Article 4 is an absolute

(and not qualified) right under the ECHR as, of course, are Articles 2 and 3. The appellant had claimed that his right not to be enslaved or forced into labour against his will contrary to Article 4 ECHR would be infringed should he return to Eritrea, the judge (on the facts as he has found them) concluded that the appellant did face a real risk of enslavement/forced labour and the grounds of appeal to the Upper Tribunal are wholly silent as to the fact that the judge allowed the appeal on Article 4 grounds. It follows that, even if the judge had erred in his assessment of Article 3 ECHR (and I find that he did not), the appeal would still have been allowed under Article 4.

Notice of Decision

5. This appeal is dismissed.

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 their 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

Date 4 July 2016

Upper Tribunal Judge Clive Lane