



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

Appeal Number: PA/10771/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre**

**On 19 September 2018**

**Decision & Reasons  
Promulgated**

**On 26 October 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**NATNAEL [T]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Karnik, Counsel, instructed by Duncan Lewis & Co  
Solicitors

For the Respondent: Mr A Tan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Eritrea, has permission to challenge the decision of Judge Devlin of the First-tier Tribunal (FtT) sent on 13 October 2017 dismissing his appeal against the decision made by the respondent on 13 October 2017 refusing his protection claim.
2. The grounds contend that the judge's adverse credibility findings were wrong in law. It was submitted that the judge wrongly classified certain

aspects of the appellant's claim as inconsistencies and wrongly dealt with the appellant's documentation.

3. I express my gratitude to both representatives for their succinct submissions.
4. I am persuaded that the grounds are made out.
5. I would observe at the outset that the judge's decision is exceptionally detailed. He properly based his approach to assessment of the credibility of the appellant on a structured approach utilising a set of credibility indicators as recommended by the Upper Tribunal in **KB and AH** [2017] UKUT 491 (IAC). The judge also correctly considered that having considered the appellant's account under the various credibility indicators of sufficiency of detail; internal consistency; external consistency; and plausibility, it was necessary to consider everything in the round.
6. However, there are several difficulties with his analysis. First of all, even though as regards internal consistency, the judge identified more than one discrepancy, he remained of the view that "the Appellant's account has remained consistent in focus and outline throughout" (paragraphs 47 and 136). If by this phraseology he meant to draw a distinction between consistency in outline and consistency of detail, that is not easily squared with his assessment of sufficiency of detail at 46 which, whilst a mixed finding, does not indicate any lack of detail in relation to the key matters regarding which the judge found inconsistent.
7. There is also a discord between the detailed analysis the judge conducts of external consistency at paragraphs 92-115 (which notes that his initial account was inconsistent with background country information (paragraph 106) and the judge's conclusion at paragraph 136 that the appellant's account "is congruent with the country background information - at least, up to the point that he made the application for the Eritrean passport".
8. The fact that despite these conclusions the judge finds the appellant's evidence not credible gives rise to a concern that the judge has not applied (although he stated more than once that he had) the lower standard of proof.
9. My concern is added to by the importance the judge attaches to the lack of plausibility in the appellant's account of seeking to obtain an Eritrean passport from the Eritrean Embassy in Sudan. For the judge this seemingly negated the fact that the appellant's account up to that point in time "must be regarded as entirely plausible" (this account included his claims that he had been detained and ill-treated whilst in military service, escaping from prison and crossing to Sudan and that he was a Pentecostal Christian). It seems that for the judge it was quite implausible that if the appellant had fled Eritrea he would go to the Eritrean Embassy in Sudan

and apply for an Eritrean passport. Indeed, the judge goes so far as to say at paragraph 131 that:

“I am not satisfied that the UNHCR would have made the same decision [to issue the appellant with a refugee card granting him refugee status] had it been aware that the Appellant was (a) willing to approach the Eritrean Embassy in order to enable him to study abroad; and (b) able to obtain an Eritrean passport, apparently without signing a letter of apology”.

However, this analysis depends on it being a rarity for Eritreans in Sudan (certainly those of military age) to apply to and obtain Eritrean passports from the Eritrean Embassy there, which is not something immediately discernible from the background country information. Further, it is unclear why the appellant’s perceived implausibility on this issue should negate the positive weight to be attached to his plausibility regarding everything that had gone before. Viewed in the context of problematic conclusions on sufficiency of detail and internal and external consistency, I consider the judge’s assessment of plausibility lacks any clear evidential foundation.

10. For the above reasons, although there is much to commend in the judge’s approach to the evidence and his detailed examination of the particulars of the case, the way he formed his conclusions reveals errors that render his adverse credibility findings unsafe. I also bear in mind that this was a case brought by a national of Eritrea of draft age and in this context, it was incumbent on the judge to consider whether perceived lies in the appellant’s account had the same negative pull as they might in a case where the country concerned did not disclose a significant number of risk categories: see **MA (Somalia)** [2010] UKSC 49.
11. For the above reasons I set aside the decision of the FtT Judge for material error of law and see no alternative to remitting the case to the FtT to be heard de novo (not before Judge Devlin).
12. No anonymity direction is made.

Signed

Date: 20 October 2018



Dr H H Storey  
Judge of the Upper Tribunal