



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07508/2019

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 28<sup>th</sup> January 2020

Decision & Reasons Promulgated  
On 31<sup>st</sup> January 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

GA

(anonymity direction made)

Respondent

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer  
For the Respondent: Mr Majid, JD Spicer Zeb Solicitors

**DECISION AND REASONS**

1. The Respondent GA claims to be a national of Eritrea. The Secretary of State for the Home Department asserts that his nationality is “unknown”.
2. On the 10<sup>th</sup> October 2019 the First-tier Tribunal (Judge AK Hussain) allowed GA’s appeal, having accepted that he holds a well-founded fear of persecution in Eritrea. The Secretary of State now has permission to appeal against that decision, granted by Designated Judge of the First-tier Tribunal Shaerf on the 6<sup>th</sup> July 2019.

### **Background and Decision of the First-tier Tribunal**

3. GA claimed asylum on the 3<sup>rd</sup> October 2017. He told officers that he was an Eritrean national and that he feared serious ill-treatment if returned there – he was a Pentecostal Christian, and he had left illegally. He submitted that his illegal exit would be punished severely, with adverse political opinion being imputed to his behaviour. This assertion was, it is accepted, consistent with the country guidance: MST and Others (national service – risk categories) Eritrea CG [2016] UKUT 443 (IAC).
4. Protection was refused on the 29<sup>th</sup> July 2019. For the purpose of this appeal the material part of the Secretary of State’s reasoning was as follows [at §33]: “your claim to be an Eritrean national is unknown”. This factual conclusion leads to the following assessment of risk [at §46]:
 

“As it is not accepted that you have established that you are a national of Eritrea, consistent with the findings in MY above, you are unable to demonstrate that you left the country illegally. It is therefore rejected that you will be persecuted for illegal exit on return to Eritrea”.
5. It will be observed that the Secretary of State nowhere asserts that GA is Ethiopian.
6. In its written decision the First-tier Tribunal began by directing itself towards the relevant country guidance on Eritrea. It noted that those who are of draft age, who are deemed to have left Eritrea illegally, face a real risk of persecution. The Secretary of State had rejected GA’s claim to have exited Eritrea illegally on the grounds that she did not accept him to be a national of that country; the First-tier Tribunal therefore proceeded to determine that issue.
7. The Tribunal assessed the evidence offered that GA had, in the company of a friend and witness, attended the Ethiopian embassy to try and get them to give him some papers. It found that evidence to be wanting and apparently attached no weight to it. It went on however to find that the Secretary of State’s reasons for rejecting GA’s claimed nationality were “slim”. It found GA’s detailed account of his life, his knowledge of Eritrea and his grasp of basic Tigrinyan all to be consistent with his claim to have been a national of that country who had spent considerable amounts of time in Ethiopia and Sudan. It therefore concluded that GA had proved his nationality to the lower standard of proof. Having regard to his age, the Tribunal was further satisfied that GA likely left Eritrea illegally and that if he returned today he would be perceived to be a draft evader and punished in a manner violating his human rights. The appeal was accordingly allowed.

## The Secretary of State's Appeal

8. The Secretary of State submits that the decision of the First-tier Tribunal is flawed for material error of law in that the Tribunal failed to apply the guidance in MA (Ethiopia) v Secretary of State for the Home Department [2019] EWCA Civ 289. The Secretary of State contends that it was for GA to demonstrate, on a balance of probabilities, that he is not a national of Ethiopia. ST (Ethnic Eritrean - Nationality - Return) Ethiopia CG [2011] UKUT 52 and MW (nationality; Art 4 QD; duty to substantiate) Eritrea [2016] UKUT 00453 (IAC) are cited to similar effect.

## Discussion and Findings

9. As Mr Diwnycz realistically accepted before me, the real difficulty with the Secretary of State's grounds is that they are predicated on a fallacy. The Secretary of State has never asserted that GA is a national of Ethiopia. Nor has she suggested that she intends to remove GA to Ethiopia. There was therefore no legal obligation upon GA to disprove such an assertion. The refusal letter repeatedly states that GA's nationality is classified as "unknown". As the Secretary of State's own guidance makes clear, the only burden in these circumstances is the burden upon GA to show that he is a refugee:

*Unknown nationality cases (previously described as 'doubtful nationality')*

In unknown nationality cases, the Home Office is not asserting that the claimant holds a particular nationality. The burden of proof rests with the claimant to show that they qualify for protection under the Refugee Convention and the European Convention on Human Rights, including evidencing their nationality. The standard of proof that the claimant needs to meet is the lower standard, they just need to show a reasonable degree of likelihood (or real risk) that they will face persecution.

[From *Nationality: disputed, unknown and other cases* (Version 6.0 - 2 October 2017)].

10. The Tribunal was therefore quite right to determine the question of nationality on the basis of the evidence before it, and applying the lower standard of proof. MA (Ethiopia) is concerned with the situation where the Secretary of State contends that an asylum claim is defeated by the claimant having an entitlement to protection of another state, and in particular where the Secretary of State intends to remove the claimant to that other state. Neither of those situations arose here. The Secretary of State had simply put the Respondent to

proof about whether he could meet the definition of a refugee in Article 1(2)A of the Convention. This included proof of his claimed nationality:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, **is outside the country of his nationality** and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”

11. That being the case the question of what happened at the Ethiopian embassy was, as the First-tier Tribunal found, of secondary significance. The single question for the judge was whether the Respondent had demonstrated that he was Eritrean. The Judge was rationally entitled to find that burden discharged on the evidence before him, and for the reasons that he gives.

### **Decisions**

12. I find no error of law and the decision of the First-tier Tribunal is upheld.
13. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Upper Tribunal Judge Bruce  
28<sup>th</sup> January 2020