ST

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04134/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 11th November 2014	**On 15th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE HARRIES

Between

MS E G
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss H Short, Counsel
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 23rd October 1975 and is a citizen of Ethiopia. On 23rd July 2014 she appeared at Taylor House before First-tier Tribunal Judge Traynor (the Judge) in an appeal against the decision of the respondent, made on 3rd June 2014, to refuse her asylum claim. She appealed under section 83(2) of the Nationality, Immigration and Asylum Act 2002 having been granted leave to enter the United Kingdom under the Legacy Policy for a period exceeding one year until

2nd September 2016. There is no removal decision. The Judge dismissed her appeal on asylum and humanitarian protection grounds in a determination dated 5th September 2014.

2. The appellant was granted permission to appeal to the Upper Tribunal on 1st October 2014 by First-tier Tribunal Cruthers who found the grounds of appeal to be arguable. The matter accordingly came before me for an initial hearing to determine whether the making of the decision in the First-tier Tribunal involved the making of an error on a point of law.

3. The background facts are that the appellant claims to have been born to an Ethiopian mother and an Eritrean father in Ethiopia in 1975. She claimed that because her father was involved with the Eritrean People's Liberation Front (EPLF) he came to the adverse attention of the Ethiopian authorities who arrested him. As a result of the family difficulties the appellant relocated to Saudi Arabia where she worked as a domestic servant for a family who treated her badly. When the family travelled to the United Kingdom in 2002 the appellant escaped from them and claimed asylum on 12th April 2002. Her claim was refused on 1st May 2002 and her appeal against the decision was dismissed on 29th October 2003 by Immigration Judge Froom.

4. The appellant submitted further grounds for consideration to the respondent based on her fear of return to Ethiopia because of her father's activities there and her approaches to the Ethiopian embassy in the United Kingdom in 2003. She claimed that her efforts to obtain a passport from the embassy failed because she lacked documents to confirm her identity and nationality; she claimed that this had effectively left her stateless. Her appeal against the respondent's refusal of her renewed claim was dismissed by Designated First-tier Tribunal Judge Manuell in 2007. The appeal before First-tier Tribunal Judge Traynor was against the respondent's decision to refuse the claim based on the appellant's renewed approaches to the Ethiopian embassy in 2013 and her fear of return because of her mixed parentage.

5. The grounds of appeal against the Judge's decision state that the issue is narrow, namely whether the appellant is stateless and falls within the Refugee Convention or paragraph 339 of the Immigration Rules. The cases of ST (Ethnic Eritrean – nationality – return) Ethiopia CG [2011] UKUT 00252(IAC) and Devaseelan [2002] UKIAT 000702 are relied upon and the Judge is submitted arguably to have misdirected himself as to the law in paragraph 28 of his determination in relation to his findings, firstly by misdirecting himself by requiring the appellant to furnish the embassy with a letter from her representatives.

6. Secondly, the Judge is submitted to have erred in his finding, unsupported by the evidence, that the appellant had partially completed a form on which she was requested by the Ethiopian Embassy to provide information; the Judge is submitted to have reached this finding without

evidence, and/or to have made a contradictory finding as to the same. It is submitted that the country guidance case law requires all relevant details to be put in writing, but does not specify the format for doing so; there was no requirement for the appellant's representatives to replicate information in a letter; the form is the indicator of the relevant details.

7. The Judge is accordingly submitted to have departed from the case of ST at paragraph 5 of the head note as follows:

> *(5) Judicial fact-finders will expect a person asserting arbitrary deprivation of Ethiopian nationality to approach the embassy in London with all documentation emanating from Ethiopia that the person may have, relevant to establishing nationality, including ID card, address, place of birth, identity and place of birth of parents, identity and whereabouts of any relatives in Ethiopia and details of the person's schooling in Ethiopia. Failing production of Ethiopian documentation in respect of such matters, the person should put in writing all relevant details, to be handed to the embassy. Whilst persons are not for this purpose entitled to portray themselves to the embassy as Eritrean, there is no need to suppress details which disclose an Eritrean connection (paragraph 105).*

8. The appellant is submitted to have provided to the embassy a completed form giving details of her father and grandfather so that there was no basis for the Judge to find that she had only partially completed the form. The application was refused by the Ethiopian embassy for failure to produce Ethiopian identity documents. There is submitted to be a contradiction in the Judge's finding in line 7 of paragraph 28, on page 9 of the determination, that the appellant had "partially completed" the form and his reference, further on in the same paragraph on page 10, that the appellant had a "completed" form which bears confirmation that she attended the embassy.

9. The Judge is submitted to have further erred by either misdirecting himself as to law or failing to consider a relevant matter, namely an earlier fact found by Immigration Judge Froom that the appellant had travelled on a passport which did not bear her details, was fake and likely to have been issued by a corrupt official. The Judge should accordingly not have found that the appellant had not done all she could reasonably expected to do and should not have found that it was "a matter of speculation" to suggest that she used a passport not in her name issued by a corrupt official.

10. It is submitted that the Judge should not, without a change of circumstances and without giving reasons, have departed from the relevant findings of Immigration Judge Froom made in October 2013 in paragraph 22 of his determination as follows:

> 22…."the passport had been obtained through a business deal. The photograph was hers but the rest of the details were not…..it is well known that passports can be obtained by illegal ethos. It is highly unlikely that a

> passport would be obtained with the appellant's true particulars under the circumstances…she obtained the passport, which may have been genuine in the sense of not being a complete forgery, having been issued by a corrupt official, but not in the sense that it was legally issued.
>
> 24. In summary…she fled using a false passport to Saudi Arabia.

11. The respondent issued a response under Rule 24 to the grounds of appeal indicating that the appeal is opposed because the Judge properly directed himself and was entitled to reach the findings he did. Mr Nath adopted this response as the core of his oral submissions and invited me to find no error of law in the Judge's decision and to allow it to stand.

12. Having considered all the relevant evidence and submissions before me I am satisfied for the following reasons that the Judge did not make any material error of law in reaching his decision. In her oral submissions to me Miss Short stated that the appellant could not reasonably have been expected to disclose details to the embassy of her passport because it was false; the Judge should not have found it reasonable to expect her to do so as it would have been of no assistance to the embassy.

13. I reject this submission. It may be that the Judge had overlooked the previous finding of Immigration Judge Froom about how the appellant obtained the passport and that it was not therefore a matter of speculation to suggest that she used a passport not in her name issued by a corrupt official. However, if this was an error on the part of the Judge I find that it was not material because his important finding was that information about the passport had never been given to the embassy and as such the appellant had not done all that she could reasonably be expected to do in order to provide information. It is submitted for the appellant that the information would have been of no use to the embassy but I find that the Judge was entitled to come to the view that it should have been submitted; the use of the information was a matter for the embassy.

14. I am satisfied that the Judge properly directed himself throughout his determination with clear references to the relevant case law. He set out the case law on which he relied, including the matters to be considered and the approach set out for judicial fact-finders in head note (5) of ST. I do not accept that the Judge erred as suggested in the grounds of appeal by requiring the appellant's representative to replicate information in a letter. The Judge properly directed himself, in accordance with ST, that failing production of Ethiopian documentation in respect of relevant matters, the person should put in writing all relevant details to be handed to the embassy. It is implicit in the Judge's finding that more information was required, not that that the information should, in the wording of the grounds of appeal, be "replicated" in a letter.

15. It was a matter of fact for the Judge to assess whether the appellant had done all she reasonably could; he was entitled in my view to

conclude that the appellant was obliged to provide "considerably more information" than she had done and he gave adequate reasons, without error, for that finding. The Judge found in the particular circumstances of this case, in the light of the appellant's representation in the proceedings, that she could reasonably have been expected to provide relevant details in a letter from her representatives. This was not placing an additional or more onerous requirement upon the appellant; it was in my view no more than a consideration of the format in which the appellant might have discharged the obligation set out in ST to provide written information.

16. The Judge's reference to a partially completed form in my view, taken in the context of the whole determination, reflects no more than his view that the appellant provided only partial information to the embassy having completed the form and does not represent a contradiction in his findings. Looking at the determination of the Judge as a whole I find that it contains no material error of law. The grounds of appeal represent a continuing disagreement with the findings of the Judge to which he was in my view entitled to come. The decision accordingly does not fall to be set aside and this appeal in the Upper Tribunal fails.

Notice of Decision

17. I find that the making of the decision in the First-tier Tribunal did not involve the making of a material error on a point of law and it follows that the Judge's decision stands.

18. The appeal in the Upper Tribunal fails.

Direction Regarding Anonymity – rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

The anonymity direction made in the First-tier Tribunal continues 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 her or any member of her 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:

J Harries

Deputy Upper Tribunal Judge
Date: 12th December 2014