Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/04939/2013

THE IMMIGRATION ACTS

Heard at Newport **Promulgated Sent**
On 20 March 2014

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

EDEN AFWERKI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Duncan, instructed by Blavo & Co Solicitors
For the Respondent: Mr E Richards, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has permission to appeal to this Tribunal against the determination of First-tier Tribunal Judge Powell dismissing her appeal against the decision of the Secretary of State on 8 May 2013 that she should be removed as an illegal entrant following the refusal of her asylum claim. The appellant's appeal is on asylum grounds: she claims to be a national of Eritrea and at risk as a Pentecostal Christian. The Judge found

that she had not established that she was a national of Eritrea; he found that she was a national of Ethiopia. He also regarded her claim to be a Pentecostal Christian as lacking in credibility.

2. All three of those findings have been challenged before us by Mr Duncan. The position is, however, that if the claimant is not of Eritrean nationality, she is not at risk as a Pentecostal Christian. Her nationality is therefore the crucial issue.

3. In making his findings, the judge noted that the appellant had produced no documentary evidence of her nationality, that her first language was Amharic, which is not the language of Eritrea but of Ethiopia, and that the evidence of her knowledge of other languages (including those used in Eritrea) was limited because all her dealings with the authorities had been in Amharic. He also indicated that he had, in general, found the appellant to lack credibility. The written grounds on which permission was granted (not drafted by Mr Duncan) read, incorrectly in our judgement, a great deal into the determination. For example, the clearly correct statement that the appellant has provided no documentary evidence of her nationality is read as though the judge were asserting a requirement to provide documentary evidence. There is no such requirement, and the judge was not asserting it. But the position is that there is no documentary evidence in this case. So far as the points about language are concerned, the grounds assert, in effect, that they do not exclude the possibility of the appellant's being Eritrean. The comment that "her knowledge of the primary language of Eritrea is limited and not really demonstrated because she has chosen to use Amharic in all of her dealings with the authorities" is asserted as an error because the appellant understood nine questions at her interview in Tigrinya (a language of Eritrea), although she gave the answers in Amharic. Finally, the invocation of a finding in relation to her credibility is asserted as an error in law on the basis that it is possible for a person not to be telling the truth about one thing, but to be telling the truth about another: selected phrases from two old authorities are cited in support of that proposition, without any reference to the numerous subsequent judicial pronouncements on the topic.

4. The truth of the matter is, as Mr Duncan acknowledged before us, that there is no positive evidence of the appellant's nationality, other than her own assertion. She said that her parents were Eritrean, but they and she are well-travelled and there was no evidence either as to the acquisition of Eritrean (as distinct from Ethiopian) nationality at the time of her birth or subsequently, nor of anything else that might bear directly on the appellant's own nationality. Even if she were regarded as wholly credible on this issue, she could only report what she thought she had been told: it is not suggested that she had any knowledge of her own that could have any bearing on her legal nationality. As the exchange in the interview shows, the use of the language of Eritrea did not come naturally to the appellant. It is not suggested that she is wholly ignorant of Tigrinya, but,

as the judge said, the evidence of her familiarity with Eritrean languages is "restricted".

5. It was for the appellant to establish her claim. In the present case, as we have said, showing that her nationality is that of Eritrea was a crucial element of that claim. The judge made a finding on it, taking into account all the evidence before him, not overvaluing it in the way suggested by the grounds, but determining whether it showed to the appropriate lower standard that the appellant was of Eritrean nationality. The judge's conclusion that she had not established that she was Eritrean appears to us to be without fault. Mr Duncan submitted that the judge could have found, on the evidence before him, that the appellant had established her case: but the fact that alternative conclusions may have been available does not begin to show that the judge was not entitled to reach the conclusion he did.

6. If the appellant is not Eritrean, the overwhelming likelihood is that she is Ethiopian. The evidence of her language perhaps slightly points to her being Ethiopian; but the appellant did not claim to be Ethiopian, and did not show that she would be at risk of any ill-treatment as an Ethiopian returned to Ethiopia. In these circumstances, the judge's duties in relation to the question whether the appellant's nationality is that of Ethiopia are very limited. In truth, his finding that she is of Ethiopian nationality is not relevant to her claim, but is simply the obverse of his conclusion that she had not established that she is Eritrean. We see no reason to interfere with the judge's finding that the appellant is Ethiopian.

7. So far as concerns the judge's examination of the appellant's claim to be a Pentecostal Christian, it would be, as we remarked at the hearing, possible to find fault: but this aspect of her claim is entirely irrelevant unless she is Eritrean. In the circumstances, therefore, any error of law in the judge's conclusions as to the appellant's religious views and practice make no difference to the outcome of the appeal.

8. For the foregoing reasons, we conclude that the First-tier Tribunal Judge's determination contains no error requiring it to be set aside. This appeal to the Upper Tribunal is accordingly dismissed.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 22 May 2014