



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

Appeal Number: AA/07809/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 13th February 2015**

**Decision & Reasons
Promulgated
On 19th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**R Y
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Madubuike of AJO Solicitors

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, R Y, date of birth 8th February 1995, claims to be a citizen of Eritrea. The nationality of the Appellant is not accepted by the Respondent. The First-tier Judge found that the Appellant had not proved that she was a national of Eritrea.
2. I have considered whether or not it is necessary to make an anonymity direction in the current proceedings. Given all of the circumstances I have determined that it is appropriate to make an anonymity direction.

3. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Brookfield promulgated on 17th November 2014, whereby the judge dismissed the Appellant's appeal against the decision of the Respondent dated 19th September 2014 to remove the Appellant from the United Kingdom. That decision was taken by the Respondent after the Respondent had refused the Appellant asylum, humanitarian protection or other relief whereby she would be entitled to remain in the United Kingdom.
4. By decision made on 12th December 2014 permission to appeal to the Upper Tribunal was given to the Appellant.
5. Accordingly the matter now appears before me to determine in the first instance whether or not there is an error of law in the original determination.
6. The Appellant claims that she is a female national of Eritrea. She claims that she was born in Eritrea to Eritrean parents in February 1995. At the age of about 2 the family moved to Addis Ababa, in Ethiopia. She thereafter claims that her family were forced to leave Eritrea in 2000. In Eritrea her parents were arrested in 2003 and she began to live with family members. She then moved to Sudan with an aunt in 2003. In January 2008 the Appellant went to Dubai using a false passport. In Dubai the Appellant married an Eritrean national. The Appellant left Dubai on 10th May 2014 travelling to Oman and then on to France. The Appellant then came to the United Kingdom claiming asylum on 17th May 2014.
7. It was the Appellant's claim that she was unable to return to Eritrea because she had left the country illegally eleven years previously and she was a practising Pentecostal Christian.
8. A significant factor in this appeal was whether or not the Appellant was an Eritrean national. The judge in her finding in paragraph 9 examines in detail the evidence presented by the Appellant. Her conclusions with regard to the issue of nationality are set out at paragraph 9(xii). There the judge specifically finds that she was unable to conclude on the standard of a reasonable degree of likelihood that the Appellant was a national of Eritrea. However the judge has gone on to consider whether or not it had been proved that the Appellant was of a different nationality specifically Ethiopian and the judge was not satisfied on the balance of probability that the Respondent had proved that the Appellant was an Ethiopian.
9. In considering of the issue as to whether or not the Appellant was an Eritrean national the judge noted the Appellant's lack of fluency and inability to speak Tigrinyan.
10. The Grounds of Appeal set out in detail the challenges to the judge's approach to the issue with regard to language. First and foremost it is suggested that the judge has failed to take account of the fact that the parents were dual linguists and the judge has, in finding that the Appellant would have been raised from birth to speak Tigrinyan before being moved to Ethiopia, is an error.

11. The judge has taken into account the fact that the Appellant's parents spoke both Tigrinyan as well as Amharic. That is evidence from paragraph 9(iv) about two-thirds of the way through where the judge specifically notes that the Appellant had made the claim that her parents were bilingual. However the judge had taken account of the fact that the Appellant had lived from birth in Eritrea. The Appellant had been born in 1995.
12. The Grounds of Appeal make much of the fact that prior to 1991 and the separation of Eritrea from Ethiopia Amharic had been the official language. However by 1995 when the Appellant was born Amharic was no longer a language forced upon Eritreans.
13. The background evidence indicated that as much as 50% of the population spoke Tigrinyan. The Appellant's representative seeks to rely upon that to suggest that accordingly 50% of the population did not speak Tigrinyan and that the Appellant would therefore be within that section of the population. That seems to ignore the fact that the Appellant's parents were bilingual. The Appellant's parents were using the language of Eritrea Tigrinyan as one of their main languages according to the Appellant's account. The judge has merely found that it was reasonably likely that living in Eritrea with parents that spoke Tigrinyan as one of their main languages, the Appellant would have been raised from birth to speak Tigrinyan to the age of 2. That would be before the Appellant went to Ethiopia. The judge found that the Appellant would have begun to learn to speak Tigrinyan during that period of time and that thereafter her parents would have used Tigrinyan.
14. In challenging the judge's approach with regard to the issue of language the Appellant's representative has sought to submit a document headed "The Languages of Eritrea". However it was accepted that that document referred to Tigrinyan being spoken by 50% of the population and that Tigrinyan and Arabic were the working languages of the country. The other languages referred to are Tigre 40% of the population; Afar 4% of the population; Saho 3% of the population and Bega, Nara and Kunama a residual amount. It is also indicated that English and Italian are widely understood. The important points to make are firstly, that document was not before the First-tier Tribunal Judge. Secondly it has to be noted that Amharic is not noted there as a major language spoken within Eritrea.
15. Whilst the Appellant's representative seeks to rely upon a specific paragraph from that report it is further to be noted that Amharic was the language of the Ethiopian ruling regime and was made the official language during that time but whilst Eritrean languages were banned. The report refers to the fact that:-

Most Eritreans refused to speak Amharic. Instead they continued to teach their native languages to their children.
16. In the light of that the judge's conclusion that a child, some four years after the occupation by the Ethiopians had ceased, would within the first period of her life be substantially exposed to Tigrinyan as the major language of the country. The judge was entitled to come to the conclusion

that the Appellant would have been taught to speak Tigrinyan from her birth until such times as she did go to Ethiopia.

17. Even thereafter whilst the Appellant was in Ethiopia it is to be noted that the Appellant's family were bilingual. Whilst they returned when the Appellant was 5 to Eritrea, at that stage the judge was entitled to conclude that the Appellant would have been taught and brought up to speak the Tigrinyan language.
18. Accordingly the judge was entitled to conclude that the Appellant's lack of knowledge of the Tigrinyan language was such that she was not satisfied that such a claim to be Eritrean and not to know Tigrinyan was credible.
19. The Appellant's representative seeks to make the argument that if 50% of the population spoke Eritrean then the other 50% of the population spoke something else. However the documents submitted by the Appellant's representative indicates that other languages other than Amharic would have been taught not Amharic itself. The languages to which the Appellant was supposedly exposed were either Tigrinyan or Amharic and there was no background evidence submitted by the representatives to show that the Appellant would have been taught in one of the other languages prevalent within Eritrea according to the documentation upon which they now wish to rely.
20. It is further suggested that the judge has taken into account immaterial factors. With respect that is not what the judge has done. The judge has clearly examined all the evidence. The judge has then taken account of the evidence and made a conclusions, given all the circumstances, that the fact that the Appellant did not speak Tigrinyan was a significant factor in showing that the Appellant was not a national of Eritrea. However that is not the only factor that the judge has taken into account. The judge has gone on to make other points.
21. The only other evidence that the Appellant had submitted with regard to proof of her nationality was taken account of by the judge. There was a birth certificate. As noted in paragraph 9(ix), that birth certificate emanated from documents all of which were issued in or about 2014. The judge considered the circumstances in which births were registered in Eritrea. In subparagraph (x) the judge has given the circumstances based upon the background information as to how a copy of a birth certificate could be obtained.
22. The judge has properly taken into account all of the evidence. The judge on examining all of the evidence had made specific findings that parts of the Appellant's account were not credible.
23. The challenges by the Appellant's representative are nothing more than a disagreement with the findings of fact made by the judge. The judge has fully justified the reasons given for finding that the Appellant was not a national of Eritrea.
24. The Appellant's representative has further sought to argue that the judge's approach to the issue of nationality in paragraph 9(xii) applies the wrong standard of proof. It is quite evident that the judge in looking at

whether the Appellant had established that she was an Eritrean national applied the reasonable degree of likelihood test as required by the cases of MA, (disputed nationality) Ethiopia [2008] UKAIT00032, Hamza [2002] UKIAT 05185 and Asif Khan [2002] UKIAT 00174. Thereafter the judge has gone on in having found that the Appellant had not established her nationality to consider whether or not the Respondent had established on the balance of probability that the Appellant was an Ethiopian.

25. The judge has given valid reasons for finding that the Respondent had failed to discharge the burden upon her on the balance of probabilities. It was only at that stage where the burden was on the Respondent to prove a specific nationality other than that claimed by the Appellant that the judge applied the balance of probabilities.
26. The approach by the judge applies the correct burden of proof in respect of each of the separate issues. Accordingly the judge has fully justified the conclusions that she has reached with regard to the nationality of the Appellant.
27. Having made specific findings the judge has then gone on to consider whether or not the Appellant would be at risk. The judge has fully justified her decision to find that the Appellant would not be at risk given the findings made. Those were conclusions on the basis of the evidence that the judge was entitled to make. The judge has properly analysed the evidence and given justifiable reasons for the conclusions reached.

Notice of Decision

There is accordingly no arguable error of law within the determination. I uphold the decision to dismiss this matter on all grounds.

Anonymity direction is made.

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 her 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 **18th February 2015**

Deputy Upper Tribunal Judge McClure