Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/02038/2014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 2nd June 2015

Decision & Reasons Promulgated
On: 13th July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Selam Ghirmai Gebremedhin
(no anonymity direction made)

Appellant

and

Entry Clearance Officer, Abu Dhabi

Respondent

Representation:
For the Appellant: Mr Tettey, Counsel instructed by GMIAU
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Eritrea date of birth 25th February 1996. She appeals with permission[1] the decision of the First-tier Tribunal (Judge Chambers)[2] to dismiss her appeal against the Respondent's decision to refuse to grant her entry clearance as the family member of a refugee.

2. The Appellant made her application for entry clearance under paragraph 352D of the Immigration Rules. She stated that she

[1] Permission granted on the 13th January 2015 by First-tier Tribunal Judge Grant-Hutchinson
[2] Determination promulgated on the 3rd November 2014

wanted to come to live in the United Kingdom with her mother and step-father, who had been granted refugee status. She was refused, by way of notice of refusal dated 21st January 2014, because the Respondent was not satisfied that she was related as claimed to her sponsors. The reason for doubting her claims were a) that when her 'mother' completed a VAF to come to the UK the Appellant was not named therein as her child, b) when her 'step-father' was interviewed in relation to his claim for asylum, he did not mention her either and c) the birth certificate relied upon was only produced in 2011.

3. When the matter came before the First-tier Tribunal in September 2014 the Appellant had produced a DNA test report which purported to show that the sponsor in the UK was indeed her biological mother. The Respondent did not accept that this report could be relied upon; specifically doubt was cast on whether the two individuals involved in this appeal were the two individuals subject to the DNA test. There was, in the Respondent's view, difficulties with the "identification and continuity" processes underpinning the report. Those parts of the report which might be expected to confirm who took the test and when were missing. Paragraph 3 of the determination records what happened next:

> "I granted an adjournment for one month with a return date fixed for everyone's convenience to enable the respondent's side to make all necessary investigations in order if it was felt appropriate, for the Home Office to make a challenge to the DNA report findings. Doing that gave the appellant's side the opportunity to serve the missing ID continuity documents. That step had to be taken because less than service of the whole contents of a report does not meet the directions in the appeal. Without good reason a party is not entitled to self edit evidence by act or omission. It is a matter of all or nothing"

4. When the matter resumed in October 2014 the Tribunal heard evidence from the primary Sponsor, the Appellant's 'stepfather' Habton Kidane Tesfasilassie. He told the court that he and his wife had married in January 2001 and in doing so had brought children from earlier marriages together. They had a total of six children, including the Appellant. They all lived together in Eritrea. In 2008 he left Eritrea and came to the UK where he was, by December 2010, granted refugee status. His wife and five of the children then left Eritrea, crossing into Ethiopia by foot; the Appellant could not make this journey due to a disability and so was left behind. She was left with her grandmother. She was subsequently brought to Sudan by an agent and is now living there with a lady called Mrs Hadas, whom the sponsor pays to look after her. Asked why he had not named her as a dependent child when he was interviewed the Sponsor said that the interview had been stressful and conducted through an interpreter, who had told him that he was only to name his biological children. He

had not understood the meaning of the term "dependents". As for the omission on his wife's VAF the Sponsor said that she wasn't mentioned "due to the disability and health problems she had". Because she was not travelling with his wife she had not mentioned her. They were advised she would be able to make an application at a later stage. The court heard evidence consistent with that of the Sponsor from three other witnesses: the Appellant's 'mother', 'brother' and a family friend.

5. In his findings Judge Chambers did not accept the explanations given for why the Appellant is not named in either the interview or the VAF. The Appellant's 'mother' said that she had five children, including two from her husband's first marriage. Judge Chambers finds that the predicament of the Appellant would have been at the forefront of her mind when asked these questions, and in those circumstances it is unlikely she would have forgotten to mention her. Similarly when the Sponsor was interviewed he named five children, and was able to give their places and dates of birth. He was specifically asked if there were any other family members that he had not mentioned; he said that there were not.

6. The evidence was therefore found to be unsatisfactory, and the success of the appeal rested on the DNA report. That report was produced by an approved testing organisation and the company contend that a "strict chain of custody is maintained at every step including verification of documentation by the sampler". Participants are required to produce two recent passport photographs and ideally, identity documentation such as a passport. These documents are then copied, and are to be attached to the report. In this case, that page, or pages, is missing. At paragraph 27 it is noted that the Appellant's representative had an opportunity during the adjournment to produce these pages. They were not forthcoming: "the purpose sought to be achieved in granting the adjournment was not achieved". The burden of proof lying on the Appellant to show that the DNA test could be relied upon as actually relating to her and her mother, that burden was not discharged. The appeal was dismissed.

7. The Appellant now appeals on the grounds that the First-tier Tribunal erred in:

   i) Failing to take relevant material into account in particular the evidence of the Appellant's 'mother' as to why the Appellant was not named on the VAF, and the evidence of the two witnesses;

   ii) Attaching undue weight to a screening interview contrary to the guidance in YL (Reliance of SEF) China [2004] UKIAT 00145;

   iii) Misdirecting itself as to the record of proceedings. The determination suggests that the adjournment had been granted in order that the 'missing' parts of the DNA report be served. In fact the adjournment was granted to the Respondent so that she

could consider whether she wished to challenge the report;

Criticism is also made of the Tribunal's decision to dismiss the appeal on Human Rights grounds. Given that the success of these grounds would depend on the central matter in issue under the Rules being resolved in the Appellant's favour, Mr Tettey did not before me pursue this submission.

8. For the Respondent Mr McVeety accepted that the determination did not directly address the evidence of the witnesses but it was implicit in the overall reasoning that their evidence could not displace the omissions in the forms and the – in Mr McVeety's submission suspiciously – selective DNA report. It is accepted that the adjournment application had been made by the Respondent but not that anything turned on that.

My Findings

9. The Appellant relied on the evidence of two witnesses, her 'brother' and a family friend, who were called upon to confirm that she is who she says she is and that she had always been part of this family unit. It is agreed that these witnesses were not substantively cross-examined. Mr Tettey submits that the effect of this is to render the rest of the reasoning unsafe.

10. I have considered this submission carefully. It is an error to ignore material evidence; the question is whether this evidence, had it been factored in more explicitly into the findings, would have made a difference. I am not satisfied that this is the case. The fact is that there were three very good reasons why this appeal was dismissed.

11. The first is that the woman claiming to be the Appellant's mother had not mentioned her in the course of her own application for family reunion. The grounds protest that insufficient attention was paid to her account of a slapdash agent and her own inability to speak or write English. The Tribunal was entitled to reject this explanation for the reasons it gave. There had been a space on the form specifically to record additional information where the applicant had explained the situation in respect of her stepchildren but had inexplicably not mentioned the plight of her own disabled daughter left behind in Eritrea. It could not credibly be claimed that the agent had ignored the Appellant. The agent was apparently attentive enough to carefully record the details of the other five children in the family, two of whom were not even her biological children. The determination did not fail to consider her explanations; it rejected them.

12. The second was that her 'stepfather' had been interviewed and had, again, mentioned the other five children but had failed to name her. The grounds argue that as a SEF interview little weight should be given to that record. This is a misconceived argument. The point

made in YL (China) is that the SEF asks claimants for asylum to set out the bare bones of their case, and in doing so they cannot reasonably be criticised for failing to put on the flesh. For instance where a claimant is asked "why did you leave your country of origin" he should not be criticised for failing to particularise each and every instance of persecution he has suffered. This is qualitatively different material from biographical details such as the names of your children. The interview record shows that the details were entered with clarity in respect of each of the five, and the Appellant is not there; nor does she feature in the 'additional information' section.

13. The third reason was the missing identification documents in the DNA report. Mr Tettey may be right to say that he had understood the purpose of the adjournment was so that the Respondent could make her own enquiries and take a decision about whether to challenge the report, but it must have been quite clear to everyone what the problem was. If the report could not be shown to relate to the two people it was supposed to relate to, it was worthless. As Judge Chambers notes, this was not a complex matter of shifted burdens or standard of proof. Did the document, in the form in which it was finally tendered, discharge the ordinary burden on the Appellant? It did not, and it fell even further short in light of the first two problems identified above.

14. It is against this background that the point about the additional witnesses must be evaluated. I cannot see how the evidence of these witnesses, taken at its highest and placed alongside the birth certificates, could possibly have outweighed the substantial difficulties in the Appellant's case. For that reason any error in omitting to make express findings on their evidence is not such that the decision should be set aside.

Decisions

15. The determination of the First-tier Tribunal contains no error of law and it is upheld.

16. I was not asked to make an order for anonymity.

Deputy Upper Tribunal Judge Bruce
19th June 2015