Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01853/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 31 May 2017	**On 02 June 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[R M]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's asylum claim for reasons explained in her letter dated 6 October 2015.

2. FtT Judge McGavin dismissed the appellant's appeal for reasons explained in her decision promulgated on 1 September 2016.

3. The appellant sought permission to appeal to the UT on grounds which (lightly edited) are as follows:

Ground 1 – findings not supported by the evidence.

At paragraph 20 the FtT found that persons expelled from Ethiopia were deemed a security risk and that Eritrean refugees were crossing the border into Ethiopia rather than the other way round. Those findings were not supported by the country information.

Ground 2 - Mibanga point.

The FtT at paragraph 17 found the claim materially lacking in credibility, prior to assessing evidence of witnesses at paragraph 41 onwards.

Ground 3 - failing to exercise anxious scrutiny.

(1) The FtT at paragraph 22 relied on the Nationality Proclamation to undermine the appellant's claim that he was deported [in 2002], when the Proclamation came into force only in 2004.

(2) The FtT at paragraph 26 relied on the Proclamation to criticise the appellant for not using it to resolve their status. However, *ST* Ethiopia CG [2011] UKUT 252 held that a person was unlikely to be able to re-acquire Ethiopian nationality as a matter of right by means of the Proclamation and would likely have to live in Ethiopia for a significant period (probably 4 years) and applied only to those resident in Ethiopia when Eritrea became independent and who had continued so to reside until the date of the directive. The legislation would not assist the appellant.

Ground 4 - looking for corroboration.

At paragraph 22 when finding that the appellant provided no evidence that the family were nationals of Eritrea, the FtT effectively looked for corroboration, when there is no onus to corroborate a claim.

Ground 5 - engaging in impermissible speculation.

The FtT engaged in impermissible speculation:

(1) at paragraph 23, when finding it not likely the appellant's parents would not have applied for an identity card for him, particularly when the appellant was not old enough to vote;

(2) at paragraph 26, when finding reasonable to assume the appellant would have learned how his family became Eritrean nationals, and that documents would have been carefully kept by the family;

(3) at paragraph 26, that he would not have kept even a birth certificate;

(4) at paragraph 38, that his parents would not have spoken Tigrinya to him;

(5) at paragraph 40, that it was reasonable to assume Amharic would have been replaced by Tigrinyan;

(6) at paragraph 44, when finding that the witness ought to have remembered such an event.

Ground 6 - arriving at contradictory findings and failing to resolve these.

The appellant is criticised for his parents not applying for an identity card, and implying they did have them, but then at paragraph 24 is criticised for failing to produce the identity cards. It is unclear why the appellant is criticised for failing to produce the cards when the FtT appears to proceed on the assumption his parents had identity cards.

Ground 7 - error assessing the witness' evidence.

(1) The FtT does not identify any material inconsistencies at paragraphs 42 and 45;

(2) the alleged inconsistencies at paragraph 43 are not true inconsistencies.

4. Designated FtT Judge McCarthy refused permission on 25th of October 2016, explaining why he thought the grounds amounted to no more than disagreement, and at some points misrepresented the judge's findings.

5. UT Judge Allen granted permission on 25 April 2017 on grounds 3, 6 and 7, but agreed with the decision of Judge McCarthy in respect of the other grounds.

6. The respondent's rule 24 response to the grant of permission, dated 16 May 2017, submits that the judge reached adequately reasoned findings of fact which do not disclose contradictions or error of law.

7. By letter from his solicitors dated 30 May 2017 the appellant advised that he was "seeking permission to argue all the grounds of appeal".

8. There was some preliminary debate on whether the UT could permit an appellant to revive grounds on which it had refused permission. Under reservation of that point, I allowed submissions on all the grounds.

9. In course of submissions, grounds 1, 2 and 4 were withdrawn, so the foregoing issue remains relevant only to ground 5.

10. Mr Winter's submissions made these main points:

Ground 3 (1), there was no evidence that there was any lead-in to the Nationality Proclamation, such that it undermined the appellant's claim to have been deported from Eritrea in 2002.

Ground 3 (2), the judge's view was contrary to the guidance in *ST* at headnotes 6 – 7.

Ground 5, at each issue there was no reasonable or evidential support for the judge's views.

Ground 6 disclosed a plain self-contradiction.

Ground 7, by reference to the decision, showed that no significant inconsistencies were identified.

The grounds cumulatively required a remit to the FtT.

11. Mrs O'Brien argued thus:

The judge had good reasons to doubt the appellant's evidence about nationality and deportation. Paragraphs 20 and 21 contained decisive reasons.

Ground 3. Matters related to the Nationality Proclamation were only supplementary.

Ground 6. There was no contradiction between finding at paragraph 23 that it was not likely that the appellant's parents would have failed to obtain an identity card for him, and at paragraph 24 that if what he said was true they would have had cards, contrary to his claim never to have had one. The ground sought to construct a contradiction by extracting elements from their context. There was no flaw in the reasoning, as a whole.

All the matters in ground 5 were reasonable inference rather than impermissible speculation.

Ground 7. The evaluation of the evidence of the witness was not only on the points selected but throughout paragraphs 41 – 47. This was not only a slip about the timing of a distant event but an evolving narrative about a crucial event. The judge was entitled to note inconsistency over whether the witness was present or had left the country by that time (paragraph 44).

The judge found at paragraphs 27 – 37 that the appellant's case failed in terms of *ST*. The grounds did not criticise those findings. The appellant having failed to show that he could not avail himself of Ethiopian nationality, there could have been no other outcome. There was no substance in the grounds of appeal, but in any event the outcome was not affected.

12. In response, Mr Winter submitted that on reflection, ground 7 alone would justify a rehearing, because if the witness was believed, the appellant is Eritrean. As to the respondent's overall argument based on *ST*, although the appellant failed on the "letter to the Embassy" issue, that was only one factor, and the case required further resolution.

13. I reserved my decision.

14. Ground 3 (1) does not disclose error. Paragraph 22 is to be read in full and in context. The judge found the evidence to show "developing and continuing legislation, which must have been in process about the time of the … claimed deportation … aimed at resolving status and residence issues of Eritreans resident in Ethiopia". That is sensible. It shows that she was aware of the timing point. It is fortified in the same sentence by the observation that there was no evidence of the family's Eritrean nationality or any other basis for deportation.

15. Ground 3 (2) is based on a partial reading of *ST* at headnote (6) and paragraphs 110 – 113. The guidance relates to those who fall into headnote (4). The appellant failed to show that he had done all he could to facilitate return as a national of Ethiopia.

16. Whether or not the appellant is procedurally entitled to seek to revive ground 5, I find no substance in it. It does no more than select some findings and categorise them as speculative. Each of those assessments was well within the scope of reason.

17. No true contradiction is disclosed by ground 6. As the presenting officer submitted, both observations are valid and they may co-exist.

18. Ground 7 does not fairly reflect paragraphs 41 – 47, where the judge gives a more than adequate explanation why she does not find the evidence of the witness to support the appellant.

19. The appellant's case as a whole fell well short of the requirements of country guidance. He failed to show that he is not entitled to Ethiopian citizenship, or that the Ethiopian authorities would arbitrarily deprive him of that citizenship.

20. The grounds of appeal resolve into no more than disagreement on the facts. They do not show that the making of the FtT's decision involved the making of any error on a point of law.

21. The determination of the First-tier Tribunal shall stand.

22. No anonymity direction has been requested or made.

Hugh Macleman

31 May 2017
Upper Tribunal Judge Macleman