



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01651/2017

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 26<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 09<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MS S M  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Adejumobi (LR)  
For the Respondent: Mr C Bates (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Bircher, promulgated on 28<sup>th</sup> September 2017, following a hearing at Manchester Piccadilly on 5<sup>th</sup> September 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a female, a citizen of Eritrea, and was born on 1<sup>st</sup> January 1990. She appealed against the decision of the Respondent dated 31<sup>st</sup> January 2017 refusing her claim to asylum and for humanitarian protection under paragraph 339C of HC 395. A reasons for refusal letter was dated 31<sup>st</sup> July 2017.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that she is a Pentecostal Christian, who is a national of Eritrea, who would as such face ill-treatment and persecution in that country. She is of Amharic ethnicity. She had been married to a man called A H. She had lived in Sudan but had not practised her Pentecostal faith openly there. Her father died when she was 2 years of age. After the death of her father, she had been taken from Eritrea to live in Sudan, where she earned a living as a housemaid. She maintained she cannot now return to Sudan because she is a Pentecostal Christian who would be forced to engage in military service in that country.

### **The Judge's Findings**

4. At the hearing before Judge Bircher, evidence was given by Reverend Pickett that the Appellant had attended the Ebenezer Baptist Church for two years. He said that the service is conducted using the Tigrinyan language, but that all worshippers are invited to attend the service which is conducted in English as well. Over half the congregation were Eritrean nationals.
5. The judge, having heard the evidence, concluded that the Appellant herself was not a credible witness (see paragraphs 28 to 30). The Appellant had maintained that she approached the Sudanese Embassy in the UK to request to be interviewed in order to establish her Sudanese nationality. However, the judge concluded that, "I attach little weight to the letters given that there is no formal response to them and the Sudanese Embassy refused to interview the Appellant in order to conduct a nationality assessment" (paragraph 31). The Appellant herself had made no effort to correspond with her aunt and husband or to seek confirmation from them of her national identity and "the Appellant could have submitted an application to the Sudanese Embassy for a passport which could only have taken matters further and more definitively had she genuinely wanted" (paragraph 31).
6. The judge also had regard to the Sprakab Report, which he considered to be inconclusive (paragraph 34). There was a letter from Pastor Solomon which confirmed that the Appellant had been actively in communication with the Ebenezer Eritrean Fellowship, but the judge held that "he has not offered an opinion as to whether the Appellant is a genuine and truly committed Pentecostal Christian" (paragraph 36).
7. Ultimately, having formed the view that the Appellant could not show that she was not a national of Sudan, the judge dismissed the appeal.

### **Grounds of Application**

8. The grounds of application state that the reference to the Sprakab Report as being insufficient (at paragraph 34) to show the Appellant's nationality as not being Sudanese, was erroneous because it did contain evidence that was material to determining this very specific issue of the Appellant's true nationality. Moreover, the judge criticised the Appellant for not having "submitted an application to the Sudanese Embassy for a passport which could only have taken matters further and more definitively" (at paragraph 31), when the Appellant had done precisely that in

approaching the Sudanese Embassy with a request to be interviewed. Second, the reasons given for rejecting the Appellant's claim to be a Pentecostal Christian were unsustainable in the light of the evidence given by Reverend Pickett and Pastor Solomon. Third, the Appellant had a child and Judge Bircher found that the Appellant "cannot claim to have established a family life in the UK within the meaning of Article 8" (at paragraph 38). However, the child's birth postdated the Respondent's decision and the Respondent had not considered the Appellant's family life in this regard. It had been specifically argued (see skeleton argument at paragraph 17) that the question of "How would the Appellant be treated were she to be returned to Sudan as a single mother with a child born outside of marriage?" had not been considered. In any event, Section 55 of BCIA 2009 imposed the duty in relation to the "best interests" of the child and this had not been considered.

9. On 12<sup>th</sup> February 2018, permission to appeal was granted on the basis that the Appellant's claimed nationality had not been properly evaluated in the context of all the evidence including the Sprakab Report.

### **Submissions**

10. At the hearing before me on 26<sup>th</sup> June 2018, Mr Adejumobi, appearing on behalf of the Appellant, relied upon the grounds of application. First, Judge Bircher did not take proper account of the Sprakab Language Analysis Report, and did not integrate it into the consideration of whether the Appellant is of Eritrean nationality. This was also a "**Mibanga** error" in that the judge had given regard to the Sprakab Report after having already made up her mind that the Appellant was not a credible witness. Yet, the Sprakab Report was clear that the evidence "does not point to an origin from Sudan or that her native language would be Sudanese Arabic". It also stated that the Appellant's "socialisation may partly have occurred in Assab/Eritrea" (see the Appellant's bundle at page 21). This was relevant because the Appellant had contended that she was of Eritrean nationality, but had left that country at an early age and subsequently lived in Sudan for most of her life, whereas the Respondent maintained that the Appellant was of Sudanese nationality. The Sprakab Report, however, contains no evidence to support the Respondent's view of her nationality. It does contain linguistic evidence consistent with an Eritrean origin and inconsistent with Sudanese origin. In these circumstances, it was wrong for the judge to have said that the Appellant "could have submitted an application to the Sudanese Embassy for a passport which could only have taken matters further" (paragraph 31).
11. Second, at the hearing, evidence from the Reverend Pickett was that "a person of Pentecostal faith would only be baptised in adulthood when they were able to understand the process and purpose of baptism" (paragraph 35). However, some Pentecostal churches do allow children to be baptised between the ages of 7 and 10 (see the Appellant's bundle at page 28). The additional letter of support from Pastor Solomon states that "she [the Appellant] encourages people to attend church with their own time there are no particular details of anybody she has actually encouraged" (paragraph 37). However, Pastor Solomon had made it clear that the Appellant has evangelised in the UK.

12. Third, the judge erred in stating that the Appellant “has no family in the UK other than her baby son and therefore cannot claim to have established a family life in the UK within the meaning of Article 8” (paragraph 38). However, a parent and child bond constitutes family life and this has been clear since **Singh [2004] EWCA Civ 1075**. This was a significant error given that the Respondent Secretary of State had not considered the Appellant’s family life as the child had been born after the date of the decision and it needed consideration as to how the Appellant would be treated in Sudan as a single mother with a child born outside marriage, if she were to return.
13. For his part, Mr Bates submitted that the judge was right to criticise Pastor Solomon in the manner that she did which was that “he has not offered an opinion as to whether the Appellant is a genuine and truly committed Pentecostal Christian” (paragraph 36). Second, there was no “**Mibanga** error” in relation to what the judge states at paragraph 34, which is a recital from the Sprakab Report, because the judge had demonstrated the entirety of her findings from paragraph 27 onwards. In any event, the judge’s recital of the Sprakab Report in terms that, “if one observes that the applicant’s native language is Amharic, that her command of Tigrinya is rather very limited and that her socialisation may partly have occurred in Assab/Eritrea” (paragraph 34) only confirms that she does not speak Tigrinya at all well, and so the report does not take matters very much further at all. Moreover, the fact that the Appellant approached the Sudanese Embassy as she claims (at paragraph 31) does not mean that she was absolved from the responsibility of actually submitting an application to that embassy for a passport in the way that the judge had pointed out. All the findings were in fact open to the judge.
14. He asked that I dismiss the appeal.

### **Error of Law**

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007 such that I should set aside the decision. My reasons are as follows.
16. First, there is the question of the Appellant’s nationality. The Sprakab Report makes it clear that she has “very limited” knowledge of Tigrinya and that her socialisation “may partly have occurred in Assab/Eritrea” (see paragraph 34 of the determination). None of this is surprising, even if she were to be an Eritrean national, given that she left Eritrea at the age of 2, and would only have a limited knowledge of Tigrinya, and given that much of her socialisation would then have taken place in Sudan, where she went on to live with her aunt. That does not mean to say that she is not Eritrean. In fact, she approached the Sudanese Embassy “with a request to be interviewed in order to establish her Sudanese nationality or otherwise” (paragraph 31). That cannot be a matter of insignificance, even if it is the case that she did not formally apply to the Sudanese Embassy “for a passport”, which she may well have been reluctant to do, if she was with her child and feared returning back to Sudan as a single mother. More significant, is a statement in the Sprakab Report, that the evidence “does not point to an origin from Sudan or that her native language would be Sudanese Arabic”.

17. Second, there is the question of her Pentecostal Christian religion. Given that there are two witnesses from the church, Reverend Pickett and Pastor Solomon, who confirm that she attends church and is involved in the practices of the church, so much so that Pastor Solomon even states that she “encourages people to attend church with her own time” (paragraph 37) it is difficult to see how, in the light of the corroborative evidence, the decision can be reached that she is not a genuine Pentecostal Christian. It is also significant, as the Reverend Pickett made clear, that “the service is conducted using the Tigrinyan language” (paragraph 25) and that over half of his congregation consists of Eritrean nationals.
18. Third, is the question of the Appellant having a family life in the UK. This was not something that was considered at the time of the decision letter because the child was not born. It is not correct that the judge paid no heed to the existence of the Appellant’s child. The full statement of what the judge meant has to be looked at. In its entirety, it reads that, “I am satisfied that the Appellant has no family in the UK other than her baby son and therefore cannot claim to have established a family life in the UK within the meaning of Article 8” (paragraph 38). Therefore, on this basis the fact that the Appellant is with a baby son is fully acknowledged. However, I would have to accept that the statement that on this basis there is no established family life within the meaning of Article 8 has to be wrong. At the very least also, it does suggest that Article 8 is engaged, so that the first of the **Razgar** steps falls in favour of the Appellant. Accordingly, given all these matters, the issue of whether it would be disproportionate to require the Appellant to return back to her country of origin cannot have been properly considered given these errors. In the same way, the issue of the return to her country of origin is not in itself possible to decide if the country of her nationality, which she asserts to be Eritrea, but the Respondent asserts to be Sudan, was not considered in the light of all the evidence, including the Sprakab Report, and the statement that the evidence “does not point to an origin from Sudan”.

### **Notice of Decision**

19. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Bircher, pursuant to Practice Statement 7.2(a) of TCEA 2007 for the reasons I have set out above.
20. An anonymity order 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 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

Date

Deputy Upper Tribunal Judge Juss

3<sup>rd</sup> August 2018