



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03272/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 9 November 2018

Decision and Reasons Promulgated
On 19 November 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HABTOM BERHE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:
 - (i) The respondent's decision dated 23 February 2018, refusing the appellant's protection claim.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Lea, promulgated on 18 April 2018, dismissing the appellant's appeal.

- (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 3 May 2018.
- (v) The grant of permission by FtT Judge Cruthers, dated 15 May 2018.

2. The submissions of Ms Loughran were along the lines of the grounds, in summary as follows:

(1) (i): The FtT failed to consider, firstly, evidence that the appellant returned to Eritrea aged 5 and fled again at 6 having lost both parents and, secondly, background evidence that there are 9 languages in Eritrea, and 50% are speakers of Tigrinya.

(ii): In noting that correct answers by the appellant were about matters in the public domain and which he would have anticipated, the FtT failed to apply the relevant burden and standard of proof in placing so much weight on inability to speak Tigrinyan, and thereby rejecting that his nationality was Eritrean.

The burden and standard of proof was set out correctly at [11], but was not applied.

(iii): Failure to give any positive weight to the appellant's correct answers on Eritrea.

(iv): This ground repeats (ii), and submits that the adverse finding is irrational.

(v): Failure to give weight to the appellant's full answer at the hearing when asked why he could not speak Tigrinya; objective evidence that Amharic is more common than Tigrinya in Assab given no weight; no reasons for dismissing this evidence.

(The ground says that the answer was not recorded, but Ms Loughran acknowledged that it is in the decision.)

(2): At [26], no explanation why there was considered to be a delay in fleeing, and no account taken of the appellant being aged only 6 at the time.

(3) At [27] the FtT noted that the Church the appellant claimed to attend in Sudan appeared to be an Ethiopian Church, overlooking background evidence that "the Medhanie Alem Ethiopian Church (Khartoum) is a renewal movement within the Eritrean Orthodox Church".

Ms Loughran added that some weight should have attached to the appellant's choice of a Church which reflected his national origins, a principal issue.

(4) Error at [34] in failing to carry out the 5-stage *Razgar* test.

Ms Loughran said that the FtT failed to factor in that as the appellant's girlfriend is a refugee from Eritrea, there was no prospect of their life together carrying on in that country.

3. Having considered also the submissions for the respondent, I do not find that any error has been disclosed which amounts to error on a point of law, or which requires the decision to be set aside.
4. It is said that the FtT failed to consider the evidence before it, but all the essential evidence said to have been overlooked is recounted in the decision.
5. There is no reason to think that the FtT failed to apply the standard and balance of proof as it directed itself to do. This ground is only a way of expressing disagreement with the outcome.
6. The appellant's correct answers were in his favour, but they were not bound to carry the day. It is far from irrational to observe that such matters may be known by persons who are not Eritrean.
7. When a judge finds against a party, that does not mean that all items of evidence in that party's favour have been given "no weight". It is for the judge to decide what weight the evidence carries, each way, and where the outcome falls. So long as that assessment remains within reason, no error of law can arise.
8. Several of the grounds go to the FtT's conclusions based on the appellant's inability to speak Tigrinya. The judge did not fail to note that Amharic is widely spoken, or to give that any weight. She noted his explanations, but said at [25], "... the appellant claims that his family spoke Tigrinya and I do not find it plausible given that he was brought up by his father, his mother and his foster mother who all spoke Tigrinya and who were all Eritrean that he cannot speak Tigrinya". She put the matter in context, and reached a conclusion open to her, for sensibly explained reasons.
9. As to ground (2), the judge perhaps made more than might be expected of lack of explanation of "delay" in fleeing. It is not readily apparent that there was any surprising delay, and this goes to a time when the appellant was too young to understand. However, this is only to find fault with a minor part of the reasoning on the facts.
10. Ground (3) shows there was an Eritrean element to the Church mentioned in Sudan, but that is neither here nor there.
11. The grounds concentrate on the findings relating to language at [22] - [25]. They do not place their criticisms in the context of the full decision. Several quite strong reasons for finding against the appellant are not challenged, such as claiming to have lived in Sudan from 2002 - 2014, but no ability to speak Arabic, [27]; misrepresenting himself as aged 17, not 21, in France [28]; and failure to take advantage of opportunity to make a claim over an extended period, [29].
12. The grounds and submissions probe where they can for error and disagreement, but they do not show that the decision, read fairly and as a whole, is less than a legally adequate explanation of why the appellant has failed to establish, even to the lower standard, that he is Eritrean, or that he is a Pentecostal Christian.

13. As to ground (4), the appellant fails to show that he had any case on human rights grounds which might realistically have succeeded. The decision at [34] is all that was required.
14. The decision of the First-tier Tribunal shall stand.
15. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Dated 12 November 2018
Upper Tribunal Judge Macleman