Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/09770/2017

THE IMMIGRATION ACTS

Field House	**Decisions and Reasons Promulgated**
On 8th May 2019	**On 15th May 2019**

Before

THE HON. MR JUSTICE MICHAEL SOOLE
UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HUSSEN [H]
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Ms C Robinson, of Counsel, instructed by Birnberg Peirce & Partners Solicitors

DECISION AND REASONS

Introduction

1. The claimant's mother was an Ethiopian citizen of Eritrean ethnicity who died in 2003. The claimant was born in 1981 in Saudi Arabia. His father

has apparently died having divorced his mother and left Saudi Arabia to go back to Ethiopia or Eritrea.

2. The claimant arrived in the UK on 10th February 1994 when he was 12 years old with his mother and sister on his mother's Ethiopian passport. His mother claimed asylum on the basis she was an Eritrean citizen who was at risk of persecution in that country, but this was claim was refused and the appeal dismissed. The claimant was granted indefinite leave to remain in August 2001.

3. Between June 2001 and April 2016 the claimant was convicted of 51 offences involving violence, dishonesty, disorder, motoring, alcohol, failure to surrender, possession of an offensive weapon, breach of an existing sentence and racially/ religiously aggravated conduct. He was warned in November 2013 and September 2014 if he continued to offend he would face deportation proceedings, but this did not cause him to modify his behaviour. The Secretary of State decided to make a deportation order in July 2016, and refused asylum and human rights representations in August 2017 and September 2018. The claimant's appeal against the refusal of the human rights/ asylum claim was allowed by First-tier Tribunal Judge R Sullivan on Article 8 ECHR grounds only in a determination promulgated on the 26th October 2018.

4. Permission to appeal was granted to the Secretary of State by First-tier Tribunal Judge Lambert on 13th November 2018 on the basis that it was arguably an error of law to find that the claimant's history of violence, dishonesty, drinking and disorderly behaviour weighed in his favour, as an obstacle to his integration if he is returned to Ethiopia, in deciding the deportation appeal. Judge of the First-tier Tribunal Davidge granted permission to the claimant to cross appeal on 4th February 2019, and extended time to admit this appeal, on the basis that it was arguable that the First-tier Tribunal Judge had erred in law in failing to provide sufficient reasoning with respect to the dismissal of the asylum claim based on the claimant's Ethiopian citizenship.

5. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

6. The Secretary of State argues in the grounds of appeal that the First-tier Tribunal Judge errs by failing to provide adequate or proper reasons for the conclusion that the claimant would have very significant obstacles to integration on return to Ethiopia. The First-tier Tribunal found that there were possibly relatives in Ethiopia to whom the claimant could turn (paragraph 28 g); there is no finding the claimant could not reacquaint himself with Ethiopian languages; further the fact that the claimant drinks and is prone to crime, disorder and violence should not be facts which assist him in showing he would not be able to integrate as this would defeat the deportation regime. In oral submissions

regarding whether the error of law was material Mr Melvin sought to argue that it was, but accepted that there was only a challenge in the grounds to paragraph 24(c)(v) of the decision, and not to the other findings with respect to integrative challenges the claimant would face, and that there was also no challenge to the conclusion, based on expert evidence, that Ethiopia would probably not recognise the claimant as a citizen.

7. In a skeleton argument dated 1st May 2019 permission was sought by the Secretary of State to also challenge the finding of the First-tier Tribunal that the claimant is socially and culturally integrated in the UK. It is argued that this is not a safe finding in light of the decision of the Court of Appeal in Binbuga (Turkey) v SSHD [2019] EWCA Civ 551 that: "breaking the law may involve discontinuity in integration" because the claimant was convicted of 51 offences between 2001 and 2016. It is also argued that alcoholism is not a factor which supports the claimant being integrated either, and so it was an irrelevant consideration placed in the balance.

8. The claimant argues with respect to the Secretary of State's appeal grounds that the First-tier Tribunal undertook a holistic and broad assessment required by paragraph 399A of the Immigration Rules/ the first exception at s.117C(4) of the Nationality, Immigration and Asylum Act 2002, and that the grounds are just a disagreement with the outcome of the appeal. The First-tier Tribunal found the claimant to be vulnerable (see paragraph 19); that he had been resident in the UK most of his life (see paragraph 24); he had never lived in Ethiopia, and there was no evidence he spoke any of its languages; he suffers from ADHD and alcohol dependence syndrome, has previously self-harmed and there is a risk he will do so again; he has no significant qualifications and has a penchant for alcohol, disorder, dishonesty and violence. It is argued that these are all valid reasons for finding that he would have very significant obstacles to integration and thus allowing the appeal.

9. With respect to the new ground the claimant argues that the ground should not be admitted as it is very late. The case of Binbuga relies on an older Upper Tribunal authority of Bossade (ss.117A-D – interrelationship with Rules) [2015] UKUT 415 and so the point could have been taken when the grounds were first drafted. In any case Binbuga is not authority finding that it is mandatory to find offending causes a person not to be socially and culturally integrated and there was full consideration of this factor in concluding that the claimant was an integrated person.

10. The claimant argues in his cross appeal that a ground of appeal before the First-tier Tribunal was that he would face persecution by way of being denied citizenship and a right to enter Ethiopia. Reliance was placed on the expert evidence of Dr John Campbell, who provided two reports and gave oral evidence, who found that it is probable that

neither Ethiopia nor Eritrea will recognise the claimant as a citizen, and that the Ethiopians were unlikely to do this as he was not born in Ethiopia and has no documentation to prove his claimed nationality, and further because he has criminal convictions he would not be issued with a passport. Dr Campbell also found that the claimant had made a bona fide effort to obtain a passport from the Ethiopian authorities. The evidence of Dr Campbell is further that there are stigmatising social attitudes to those with mental health problems and it was extremely unlikely he would be able to access free mental health care in Ethiopia. It is argued that the First-tier Tribunal errs as the evidence of Dr Campbell is accepted at paragraph 25 of the decision, and thus it was irrational for the First-tier Tribunal to find that any information that the claimant or his sister could provide regarding relatives in Ethiopia would have made any difference to the Ethiopian authorities, especially as he had attended an interview. The findings at paragraph 28 of the decision, it is said, contradict those at paragraph 25 of the decision.

11. The Secretary of State, in his Rule 24 response, argues that the First-tier Tribunal Judge gave adequate consideration and reasons with respect to the issue of the claimant being accepted as an Ethiopian national. It was open to the First-tier Tribunal to find that the claimant had not been frank about his connections with Ethiopia and that he may have some family support there, and that he had not done what could be expected to obtain recognition of his citizenship from the Ethiopian authorities.

12. We asked Ms Robinson if she wished to pursue the cross appeal if our decision was that we found that there was no material error of law in the decision allowing the appeal under Article 8 ECHR. We rose to consider whether we would admit the new ground put forward by the Secretary of State and to allow Ms Robinson to take instructions on pursuing the cross appeal. When the hearing reconvened we informed the parties that we did not extend time to admit the Secretary of State's new ground due to it being late and the point previously available to be taken. We also informed the parties that our decision was that there was no material error of law in the decision of the First-tier Tribunal allowing the appeal on Article 8 ECHR grounds, but that our full reasons would follow in writing. Ms Robinson confirmed that the cross appeal was not pursued in these circumstances and so we make no findings on that appeal.

Conclusions – Error of Law

13. The First-tier Tribunal finds at paragraph 24 of the decision that the claimant can fulfil the first two requirements of the exception to deportation at paragraph 399A of the Immigration Rules as he has lived lawfully in the UK for most of his life and is socially and culturally integrated. The First-tier Tribunal also finds that he would have obstacles to integration if returned to Ethiopia because he has never lived in Ethiopia; because he does not speak any Ethiopian languages;

because of discrimination against those of Eritrean ethnicity in Ethiopia; and because of his inability to keep himself from committing crime which is related to his ADHD diagnosis and problems with alcohol abuse, which in turn have caused him to self-harm in the past. At paragraph 25 the First-tier Tribunal finds that the Ethiopian authorities would not recognise the claimant as an Ethiopian citizen, relying upon Dr Campbell's evidence, and that this conclusion was not affected by the fact that the claimant had not done all he should have done to assist the Ethiopian authorities and even though there was a lack of candour by the claimant and his sister about family matters, as set out at paragraph 26 and 27 of the decision. At paragraph 27 the First-tier Tribunal decides that taken as a whole, relying upon the facts as found at paragraph 24 and adding in the claimant's lack of any significant qualifications, the claimant had shown he would have very significant obstacles to integration if returned to Ethiopia and thus had shown that he qualified under the exception at paragraph 399A of the Immigration Rules making his deportation disproportionate under Article 8 ECHR.

14. We find that the only question which arises from the Secretary of State's grounds of appeal is whether the reliance on the fact of the claimant's "penchant for disorder, dishonesty and violence" in finding that he would have very significant obstacles to integration was an error of law. Factually it is obviously correct that a likelihood of future criminality would make it difficult for an appellant to integrate in any society. There is authority, for instance in the cases of Binbuga and Bossade referred to in the discussion of the Secretary of State's additional ground of appeal, that supports a conclusion that an appellant may not be integrated into society into the UK if he or she has led a life of crime. We agree with the submission on behalf of the Secretary of State however that an appellant cannot properly argue that his future propensity to commit crime, and be violent and dishonest, is a factor strengthening his or her case that he/she would have very significant obstacles to integration if deported. This is for public policy reasons. It would defeat the rationale of the deportation regime, and would strengthen the case of those who have the highest chances of recidivism and disadvantage those who have managed to reform themselves and have the very likely prospect of living a law-abiding life in the future.

15. We find that the finding that a propensity to commit crime is a factor which strengthens the claimant's case that he would struggle to integrate is quite different from the finding that the claimant suffers from alcohol dependency syndrome and ADHD and that these conditions will inhibit his integration. These are medical and neurological conditions which may well disadvantage a person in integrating in society, and may properly, without contravening public policy considerations, be factors to which weight is attributed depending on the facts of the individual case. It goes without saying that people with conditions such as ADHD or alcoholism do not always or even commonly commit crime.

16. We are however satisfied that the error of law by the First-tier Tribunal in including the claimant's propensity to commit crime as a factor which assisted him in proving he would have very significant obstacles to integration is not material on the particular facts of this case. This is because we are satisfied that the other factors found in this case going to the claimant having very significant obstacles to integration are undoubtedly sufficient to meet this test. The First-tier Tribunal makes the following findings which we find show that the outcome would inevitably be the same if the appeal were remade: the finding that expert evidence shows that the claimant is, on the balance of probabilities, not a citizen of Ethiopia and would not be given a passport; the finding that he has never lived in that country; the finding that he does not have any significant qualifications; the finding that his main family member, his sister, lives in the UK although he might not be entirely without family support in Ethiopia; the finding that he does not speak the languages spoken there; the finding that he would face discrimination in Ethiopia due to his Eritrean ethnicity; and the finding that he suffers from alcoholism and ADHD, and has committed acts of self-harm in the past.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

2. We uphold the decision of the First-tier Tribunal allowing the appeal on Article 8 ECHR grounds.

Signed: Fiona Lindsley Date: 13th May 2019
Upper Tribunal Judge Lindsley