Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13349/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 2nd August 2019	**On 27th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MATEWOS GEBRAMASKEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr W. Khan (Counsel)
For the Respondent: Mr D. Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Young-Harry, promulgated on 4th February 2019, following a hearing at Birmingham Priory Court on 25th January 2019. 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 male, a citizen of Eritrea (contested), and was born on 10th August 1988. He appealed against the decision of the Respondent Secretary of State dated 14th November 2018, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a national of Eritrea and is a Pentecostal Christian. He fears that his illegal departure from his country, and his failure to complete military service, would result in harsh treatment being meted out to him on return. However, the Respondent does not accept that the Appellant is from Eritrea. It is asserted by the Respondent that he is from Ethiopia. The Respondent reaches that conclusion on the basis that the Appellant spoke "Amharic", which is more closely related to Ethiopia than to Eritrea. In Eritrea the spoken language is "Tigrinya", and the Appellant could not demonstrate proficiency in this language.

The Judge's Findings

4. The judge observed how the Appellant spoke Amharic and understood a small amount of Tigrinya. She observed that the Appellant's lack of Tigrinya, as demonstrated in his performance during the substantive asylum interview, did not persuade her that he was Eritrean. Moreover, he had provided evidence that he had visited the Ethiopian Embassy in London, to establish his nationality there, but had only spoken to the receptionist, and taken matters no further (paragraphs 20 to 22). This was important because had he been an Eritrean national, then an attempt to apply for confirmation of Ethiopian citizenship would have quickly revealed that he was not Ethiopian but more likely Eritrean. The judge observed that "the Appellant made no attempt at all to apply. Simply walking into an embassy and asking a receptionist for help with confirming his nationality, I find does not assist his case" (paragraph 23). In addition, there was "a lack of any supporting evidence regarding his claim to be Eritrean", as well as there being "a number of inconsistencies in his evidence" (paragraph 24).

5. Turning to the substantive aspect of the Appellant's claim, namely, that he was a member of the Pentecostal Christian community, the judge held that the Appellant's attendance at a Pentecostal Christian Church had been sporadic and inconsistent in the past. He had begun to attend more regularly in the United Kingdom and there was a letter from the Reverend Daniel (at paragraph 36) who had confirmed that the Appellant had been attending church since June 2018. However, the judge held that this had to be balanced against the Appellant's occasional attendance of church "over the years" (paragraph 37), and when this was balanced against the "regular attendance" in the United Kingdom (paragraph 38), the judge could not be satisfied that the Appellant was genuinely as committed as he made out. If anything, the regular attendance currently was "in order

to bolster his asylum claim" (paragraph 38). Applying the jurisprudence in relation to such cases, the judge held that, "I find his past behaviour suggests that he would not pursue or practise his faith either openly or discreetly on his return" (paragraph 39).

6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the finding by the judge that the Appellant was of an Ethiopian nationality, and not an Eritrean national, was not properly reasoned and amounted to a material misdirection. They also assert that the judge's treatment of the Appellant's language difficulties was irrational. Moreover, it is stated that the asylum claim was wrongly dismissed. Finally, the conclusions with respect to paragraph 276ADE(vi) in relation to there being "very significant obstacles" to the Appellant's relocation to his country of origin, was an error of law as well.

8. On 15th April 2019, permission to appeal was granted. The grant of permission was in two sections. The first section, made it clear that,

> "The judge gave many and varied reasons which gave rise to the judge's finding that the Appellant had not discharged the burden of proving to the balance of probabilities that he was an Eritrean national and the judge's assessment of the matter was to be found at paragraphs 16 to 28 inclusive of the decision. The judge's concerns were open to the judge on the evidence."

9. However, it was then secondly stated that the judge appeared to have reached inconsistent conclusions in relation to the Appellant's risk of return, on account of his membership of the Pentecostal Christian faith. This inconsistency arose in relation to what was said at paragraphs 37 to 38. At paragraph 37 the judge had said that the Appellant "has occasionally attended church over the years". But, at paragraph 38 it was said that, "I find regular attendance does not speak to the Appellant's commitment or involvement in his church or faith". The grant of permission ended with the words "the application for permission is granted".

10. A Rule 24 response was carefully and closely reasoned. It is dated 14th May 2019. It makes the point that the grant of permission found little merit in the challenge to the judge's findings in relation to the Appellant's nationality claims. If that was the case then it followed that the Appellant had failed to establish that he was an Eritrean national. The issue of the Appellant's claim to Pentecostal Christianity was rendered immaterial in the light of the fact that the Appellant has not claimed, in the alternative, that this would be a risk factor upon return to Ethiopia.

11. Second, the judge notes that in addition to the findings (between paragraphs 16 to 28) there were further findings on the evidence around

nationality (between paragraphs 29 to 32) and these were cogently reasoned and open on the evidence for the judge to come to.

12. Thirdly, there was no inconsistency between paragraphs 37 and 38. The judge was clearly referring to the Appellant's admitted past irregular church attendance as indicating the now claimed regular attendance. This being so it was merely a "ruse" to bolster an otherwise weak claim. Furthermore, there was the absence of **Dorodian** witnesses which undermined the Appellant's claim that he was a regular attendee at the Pentecostal Christian Church in the UK. Indeed, the judge had concluded that even if the Appellant was a Pentecostal Christian, he was not an active one and could continue with his religious faith on the basis of being a "discreet" practitioner of that faith.

Submissions

13. At the hearing before me, the Appellant was represented by Mr W Khan. He went through the grounds of application in considerable detail, closely arguing the relevant points, in a measured and careful way.

14. First, he submitted that the finding in relation to the Appellant's nationality was an error of law because the case of **FA (Eritrea – nationality) Eritrea CG [2005] UKIAT 00047**, had made it quite clear many years ago, that the origins of the Appellant's parents is a material factor in considering whether the Appellant's nationality is as claimed. In this case the Appellant had asserted that his parents were of Eritrean nationality. The judge makes no finding on that claim. Unless that issue was first decided, it was not possible to then conclude that the Appellant was not a national of Eritrea. This is because in Eritrea there is in existence the 1992 Eritrean Nationality Proclamation which states that "any person born to a father or mother of Eritrean origin in Eritrea or abroad is an Eritrean national by birth".

15. In this case, what had happened was that the Appellant had been born in Eritrea, of Eritrean national parents, and had then left that country at the age of around 3, with his parents, to go to live in Ethiopia. Thereafter, at the age of 8, he had returned back to Ethiopia. This being the chronology, it was important that the judge looked at the nationality of the parents. It was also important in another way. This was the question of the Appellant's linguistic abilities. A child normally becomes cognizant of language at around the age of 2. In this case, if the Appellant had left at the age of 3, to leave Eritrea and go to Ethiopia, then he would only have had about a year's knowledge of hearing the Tigrinya language spoken to him or in his presence. This would explain why his command of the Tigrinya language, was as rudimentary as it was. This also explains why the judge's treatment of the questions asked during the substantive asylum interview of the Appellant was misguided.

16. The judge had said that of the five questions asked the Appellant had only answered two. However, when the Appellant was asked (at question 194)

what year he was born in, he had said that he was born in "Assab", which is in Eritrea. He was likely to have misunderstood the question. At question 194 he was asked what was the nearest hospital to the city where he lived in Ethiopia, and this would have been far too difficult a question for him to answer (and I accept that this is indeed the case because unless the Appellant had the need to go to the hospital he would not have known where the hospital was for the few years that he was living there). There is then a question at question 198 where he is asked what the word for "car" is in Tigrinya, and the Appellant states "makina", but the interpreter indicates that this is incorrect. It is not for the interpreter to give evidence in this way and he was obviously going outside the bounds of his professional competence in this regard.

17. In relation to the use of language, the situation appears to have been that the screening interview was in Tigrinya and at the end of that interview the Appellant was asked whether he understood the question and he had said that he had done so. Mr Mills, however, for his part made it clear that the refusal letter had stated (at paragraph 26) that the screening interview as well as the substantive asylum interview had both been in Amharic, but for the five questions that the Appellant had been asked during his substantive asylum interview in Tigrinya.

18. The Appellant then went on to deal with the judge's treatment of the question as to whether the Appellant was a member of the Pentecostal faith. He repeated here what was said in the grounds of application, namely, that there was an inconsistency between what was said at paragraph 37 and at paragraph 38. This, he claimed, had to be cross-referred to the two witness statements that the Appellant had provided at the hearing. One of these was dated 17th August 2018 (see page 35 of the Appellant's bundle) and the other was dated 10th December 2018 (see page 27 of the Appellant's bundle). In the first witness statement, the Appellant had said (at page 35) that "between 2000 and 2003, we suffered problems due to our religion which was banned in Eritrea since 2002". This showed, submitted Mr Khan, that the Appellant claimed to have been the subject of ill-treatment for a period of at least three years on account of his religion. In the second witness statement (at page 31 of the Appellant's bundle), the Appellant states that "I am a Pentecostal Christian" (paragraph 15) and that "I was a Pentecostal Christian in Eritrea. My parents are also Pentecostal as well" (paragraph 16), before going on to say that "my faith is very important to me. I would not be able to practise it safely in Eritrea" (paragraph 17). The judge's decision was in error in not properly taking account of this evidence in the two witness statements, submitted Mr Khan.

19. Finally, he stated that the judge's conclusion in relation to there being an absence of "very significant obstacles" to the Appellant's relocation and integration in Ethiopia was misconceived in that it involved a misapplication of paragraph 276ADE(vi) for the reasons that are set out in the grounds of application.

20. For his part, Mr Mills submitted that the grant of permission had already stated that the judge was entitled to come to the conclusions that she did on the issue of nationality. However, because the grant of permission had then ended with the statement that "the application for permission is granted" it had been open today for Mr Khan to argue the matter as he did. Nevertheless, he would make the following submissions. First, the case of **FA (Eritrea) [2005]** is an old case. It was not determinative of the issues in this case. If the evidence in question here was simply the oral evidence of the Appellant, which the judge had rejected, then it was difficult to see what his stating that his parents were also from Eritrea, would add to the judge's assessment of the Appellant's nationality. Second, in relation to the language, both the screening interview and the substantive asylum interview were undertaken in Amharic and the Appellant had clearly demonstrated difficulties over the five questions that he was asked in Tigrinya. Third, the Appellant did not make a *bona fide* attempt at the Ethiopian Embassy to ascertain his nationality. It was incumbent upon him to do so, and then to return to a Tribunal hearing with further evidence that he had been prevented from taking citizenship at the Ethiopian Embassy because he was Eritrean. The onus was on him. His failure to do so meant that he was not able to discharge the burden of proving what his nationality was. Finally, the judge had concluded that the Appellant would not be at risk of ill-treatment because his practise of the Pentecostal faith had been irregular and on that basis, he could practise his faith in a discreet manner because he was not actively involved in his faith as he maintained.

21. In his reply, Mr Khan submitted that **FA (Eritrea) [2005]** was still relevant. It was still good law. It did require the Tribunal to begin the issue of determining nationality on the basis of asking what the parents' nationality was. Furthermore, the case of **MA (Disputed nationality) [2009] UKIAT 00022**, makes it quite clear that the Tribunal had to ask whether the country in question would accept the Appellant as one of their own, and in this case there was no evidence that that was so.

No Error of Law

22. I am satisfied that the making of the decision by the judge did not involve 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. Notwithstanding Mr Khan's eloquent and well-made submissions before me, I find that the judge was entitled to come to the conclusions that she did.

23. First, although it is the case that **FA (Eritrea)** makes it clear that under the 1992 Eritrean Nationality Proclamation, the initial question is what the nationality of the parents is because "any person born to a father or mother of Eritrean origin in Eritrea or abroad is an Eritrean national by birth", in this case the judge had not found the Appellant to be a credible witness in relation to the claimed nationality.

24. Second, the judge was emboldened in this decision by the assessment of the Appellant's frugal attempt to go to the Ethiopian Embassy and ascertain his nationality, because there he failed to do anything more than simply speak to the receptionist. The judge's firm conclusion was that,

> "I find his failure to make an actual application confirming his nationality, does not make this a bona fide attempt to confirm his nationality following **MA (Ethiopia) [2009] EWCA Civ 289**. It is unclear what the Appellant told the receptionist, however if he informed her that he was Eritrean and that he wanted the assistance of the Ethiopian Embassy, it follows that he was informed that they could not help" (paragraph 22).

25. Third, the Appellant's own evidence was that he had engaged in the past in irregular church attendance. It is only with the church in Birmingham, at the Christ Convent Church, that the Reverend Daniel, confirmed that the Appellant had been attending the church since June 2018 (paragraph 36). In relation to the Appellant's past attendance, the judge was clear that "his evidence is that he has occasionally attended church over the years" (paragraph 37).

26. That being so, the judge was entitled to conclude that the "regular attendance" presently was simply an attempt "to bolster his asylum claim" (paragraph 38). In these circumstances, the judge even stated that "even if I am wrong and the Appellant is a Pentecostal Christian, I find his past behaviour suggests that he would not pursue or practise his faith either openly or discreetly on his return" (paragraph 39). That allows for every possibility and the judge was entitled to come to the conclusion that she did, and there is no error of law.

Notice of Decision

27. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

28. No anonymity direction is made.

29. This appeal is dismissed.

Signed Date

Deputy Upper Tribunal Judge Juss 23rd August 2019