Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13872/2017

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 7 November 2019	**On 22 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

KGH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Howard, Solicitor, Fountain Solicitors
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge of the First-tier Tribunal Ford dated 4 March 2019 dismissing the Appellant's appeal against the decision of the Respondent dated 16 December 2017 refusing her protection and human rights claim.

2. The Appellant asserts that she is a national of Eritrea and that she arrived in the United Kingdom on 10 August 2017. She asserted that she was

born in Asmara, Eritrea and that both her parents were Eritrean. She stated that her father was killed in around 1993 and that in 1994, when the appellant was approximately 5 years old, her mother took her to live in Sudan where she remained for the next 23 years. The Appellant's mother died when the Appellant was 7 years old the Appellant was then cared for by a neighbour, an Amharic speaking woman from Ethiopia residing in Sudan.

3. The Appellant stated that she did housework for this woman but that she also suffered sexual abuse at the hands of a member of the woman's household. The Appellant stated that she was eventually able to obtain her own accommodation. She had a son who she stated was conceived through rape but the Appellant later formed a consensual relationship with a man from Ethiopia. In 2017 the Appellant left her son with her partner, and left Sudan travelling eventually to the United Kingdom where she claimed asylum.

4. She sought protection on the grounds that she was a national of Eritrea, that she had left Eritrea illegally at the age of 5 and that if returned there she would be subjected to indefinite military service which would amount to inhuman or degrading treatment or punishment.

5. The Respondent rejected the Appellant's assertion that she was a national of Eritrea, for reasons which included the fact that the Appellant had spoken Arabic during her screening interview, and Amharic during her substantive SEF interview, rather than Tigrinya, as might be expected of a national of Eritrea. Further, within her substantive interview she had stated that the languages that she spoke were Arabic and Amharic, stating also that 'I understand Tigrinya but I can't explain it as much'. When asked what language her parents spoke before they passed away the Appellant is recorded as saying Tigrinya at question [25]. When asked at [26] what language was spoken at home with her mother the Appellant stated Tigrinya, Amharic and Arabic.

6. In the decision letter the Respondent noted that the Appellant did not fully understand Tigrinya which was said to be the main language of Eritrea. It was also noted that the Appellant's mother had only spoken Tigrinya and that was the language the Appellant had used to converse with her mother in at home. It was said that this represented an inconsistency with the Appellant's answer at [26] of the SEF where she stated that she had spoken Tigrinya, Amharic and Arabic at home. The Respondent asserted that the Appellant's claim that Amharic was the principal language used at home, was inconsistent with country information that Eritreans in Eritrea spoke Tigrinya (although I note that this point does not seem determinative of the assessment of what language the Appellant might have spoken after leaving Eritrea for Sudan.)

7. It was suggested at paragraph 34 of the decision that it was implausible that the Appellant would only speak Amharic as an adult, and it was

unlikely, if she had spoken Tigrinya up to age of 7 that she would now speak no Tigrinya. The Respondent was also critical of the extent of the Appellant's knowledge of the geography of Eritrea and ultimately found that the Appellant was not a national of Eritrea.

8. The Appellant appealed, her appeal first came before Judge of the First-tier Tribunal Hawden-Beal at the Birmingham Hearing Centre on 31 January 2018 resulting in her appeal being dismissed. The Appellant successfully appealed to the Upper Tribunal, Upper Tribunal Judge Hemingway setting aside the judge's decision and remitting the appeal to the First-tier Tribunal. It was thus that the matter came before Judge of the First-tier Tribunal Ford at the Birmingham Hearing Centre on 22 February 2019.

9. The Appellant gave evidence before the judge although the language in which he did so does is not stated in the decision. The notice of appeal against the Respondent's decision of 16 December 2017 requested that an Amharic interpreter be made available. I presume therefore that the Appellant spoke Amharic in her evidence on 22 February before the judge but my decision in this appeal does not turn on what language the appellant used for the hearing before the judge.

10. The judge made findings including the following (in summary) in the following paragraphs of her decision:

> 13. It was not credible that the Appellant would have left her 11 year old son in the care of her partner with whom she had been living for a relatively short period of time before travelling by herself across several countries.
>
> 17. (a) (i) The Appellant's claim that she had attempted to visit the Ethiopian Embassy in the United Kingdom was described as a somewhat farcical visit and that the Appellant's efforts to speak with staff at the embassy would be given no weight.
>
> (ii) The Appellant's inability to speak Tigrinya was inconsistent with the Appellant's mother having been her carer to the age of 7.
>
> (iii) The Appellant could not answer geographical questions regarding Eritrea that she might reasonably have been expected to answer if she had left at the age of 5, had lived with her mother for another two years in Sudan and then lived with an Ethiopian woman thereafter whilst mixing with Eritrean ex-pats and not going to school.

(ix) The Appellant had showed no curiosity about Eritrea until the Respondent disbelieved her claim to be a national of Eritrea.

(v) The Appellant had called no Eritrean friends or contacts in the UK to give evidence on her behalf.

(vi) The Appellant had actually given no clear reason for leaving *Eritrea* when she did.

(vii) No clear reason had been given by the Appellant for failing to apply for residence status in Sudan.

(viii) Although the Appellant had stated that her partner would have problems in Ethiopia she did not say what they were.

11. The judge then found at paragraph 18-19:

> ’18. I do not accept that this Appellant has established even to the lower standard of proof that she is a national of Eritrea or that she was born there. She is not being removed to Eritrea. She will therefore face no risk whatsoever of compulsory conscription by the Eritrean authorities.
>
> 19. I find that this Appellant has lied about her nationality and that she has yet to tell the truth about her nationality. I cannot find what nationality she actually is as she has yet to make any honest enquiries with the Ethiopian Embassy, the Sudanese Embassy or the Eritrean Embassy as to whether they recognise her as one of their nationals.”

12. The judge dismissed the appeal.

13. The Appellant appealed to the Upper Tribunal, permission initially being refused but granted on renewed application. The renewed application argued that the judge erred, in summary, as follows:

(i) The judge failed to assess the Appellant’s nationality in the light of the Eritrean nationality law. The judge had failed to make findings as to the origins of the Appellant’s parents, which was a material consideration when assessing the Appellant’s nationality. Reference was made to paragraph 3 of FA (Eritrea – Nationality) Eritrea CG [2005] UKIAT 00047.

(ii) In finding it implausible that the Appellant would not know more about the geography of Eritrea, the judge failed to give any or adequate consideration to the fact that the Appellant had stated that she had left that country at the age of 5.

(iii) Whereas the judge had stated that the Appellant had given no clear reason for leaving *Eritrea* when she did, this failed to take into account the Appellant's evidence that she had left with her mother in 1993 or 1994 following the death of her father.

(iv) The judge had made inconsistent findings, finding on the one hand that the Appellant had lied about her nationality, whereas the judge had stated that she was unable to find what nationality the Appellant was; these were inconsistent with one another.

(v) The judge had misdirected herself in law in relation to standard of proof; whereas it was for the Appellant to establish a reasonable degree of likelihood that she was a national of Eritrea, it was for the Respondent to show on a balance of probabilities that the Appellant was a national of Ethiopia, if the Respondent adopted the position of making a positive assertion that that was her nationality (see Jamila Omar Hamza v Secretary of State for the Home Department [2002] UKIAT 05185).

(vi) Failing to make any or adequate findings in relation to the Appellant's claim for leave to remain on private life grounds under paragraph 276ADE(1)(vi) in particular as to whether she would have very significant obstacles to integration into Ethiopia.

14. Permission to appeal was granted by Upper Tribunal Judge Kamara on 21 June 2019 on the basis that the grounds of appeal were arguable.

Submissions

15. Mr Howard adopted the grounds of appeal and expanded on them as follows. In relation to the suggestion by the judge at [17(a)(v)] that the Appellant had called no Eritrean friends or contacts in the UK to give evidence on her behalf, this failed to take into account a witness statement which the Appellant had filed in support of her appeal from a friend (Mr GG) dated 29 October 2018. Although it was accepted that this witness had been unable to attend, Mr Howard asserted that the judge erred in law in failing to have any regard whatsoever to the content of Mr G G's witness statement. The witness statement provided, amongst other things, that he had known the Appellant in Sudan and had met her again coincidentally in the United Kingdom. He asserted that he was aware that the Appellant was originally from Eritrea because in Sudan the Appellant had told him all about her problems and that they had got to know each other.

16. During Mr Howard's submission on the judge's suggestion at [17(a)(vi)] asserted that the Appellant had given no clear reason for leaving *Eritrea*, I indicated that it was my view that this appeared to be a typographical error and that the judge appeared to have intended to refer to *Sudan*. The

point being made in that paragraph overall was that the Appellant had, in the judge's view given no clear for reason for leaving Sudan when she did. The paragraph continues "... she described no incident that made her leave. She was living with her partner and her son in Sudan and it was a very odd thing to do to leave at that point when she had a son to care for." The remainder of the paragraph all relates to her departure from Sudan. Mr Howard argued nonetheless that the judge had still not given adequate reasons for suggesting that the Appellant had not given an adequate explanation for leaving Sudan. He invited me to set the decision aside.

17. Mrs Aboni resisted the Appellant's appeal suggesting that the judge had directed herself in law appropriately and had made findings of fact which were open to her on the evidence. There was no adequate evidence that the Appellant had made sufficient enquiries to the Ethiopian, Eritrean or Sudanese authorities as to whether she may be treated as a national of any of those countries. Mrs Aboni asserted that the judge had been right to observe the limitations on the Appellant's language abilities in Tigrinya and it was open to the judge to treat the Appellant's inability to speakTigrinya fluently as supportive of the finding that the Appellant was not a national of Eritrea.

Discussion

18. It is right to acknowledge that the judge did not make any specific finding as to the nationality of the Appellant's parents. I accept that in accordance with the relevant Eritrean nationality laws, the origins of the Appellant's parents would be material to the question of the Appellant's own nationality.

19. However, the Appellant had asserted in evidence that her parents were Eritrean and the judge set out at [2] the Appellant's account of her early life in Eritrea. The judge's finding overall was that the Appellant had not made out to a reasonable degree of likelihood that her claim to be of Eritrean origin was true. Although there was no specific rejection of the proposition that the Appellant's parents were both Eritrean, this is implicit within the judge's findings. I find that the judge has not proceeded under any misapprehension as to the provisions of the Eritrean nationality proclamation and it is to be assumed that the judge proceeded on the basis that if she were satisfied that the Appellant's parents were Eritrean, then the Appellant would also be Eritrean.

20. However, the judge gave a number of reasons for rejecting the suggestion that the Appellant was from Eritrea. I find in all the circumstances of the case that the judge was not additionally and specifically obliged to state that she was not satisfied that the Appellant's parents were Eritrean.

21. The Appellant's next ground is that the judge erred in law in failing to have any or adequate regard to the fact that the Appellant had left Eritrea at the age of 5. However, it is clear that when assessing the Appellant's

linguistic abilities and the extent of her geographical knowledge of Eritrea, the judge was fully aware of the age at which the Appellant was said to have left Eritrea. The judge took the view that the Appellant's lack of fluency in Tigrinya was not consistent with her account that she continued to live with her mother up until the age of 7, and associated with Eritreans in the diaspora community in Sudan thereafter. I find that such a finding was reasonably open to the judge on the evidence, and I find that the judge has not erred in law in failing to take any material factor into account at that part of her decision.

22. In relation to the judge's finding that the Appellant had given no specific reason for leaving Eritrea I find that this is a typographical error in the judge's decision. It is clear to me that the judge was here referring to the Appellant having given no particular reason for leaving Sudan at the time that she did. Mr Howard, adapting his arguments in the light of my finding that that represented a mere typographical error, argued that the judge in those circumstances had erred in law in failing to have regard to the reasons which the Appellant had given for her departure from Sudan at that time, which included repeated arrests and harassment from the Sudanese police. However, it is apparent from the judge's decision at [17(a)(vi)] that the judge was aware of the claim that that such arrests had been taking place, and yet there did not seem, to the judge's satisfaction, to be a sufficiently cogent reason why the Appellant decided to leave Sudan at the time, bearing in mind, as the judge did, that the Appellant left behind her approximately 11 year old son with a relatively new partner. The judge took the Appellant's evidence into account, and her decision is not perverse.

23. I find that there is not necessarily any inconsistency in a judge finding on the one hand that an appellant has not told the truth about their nationality, but being unable to make a positive determination as to what other nationality the appellant held. It may be the case, as here, that the judge is not satisfied to a reasonable degree of likelihood the Appellant has established that she is a national of Eritrea, but the judge is unable to find what other nationality the Appellant may be. There is no error in the judge's approach, in my view.

24. The Appellant also argues that the judge has misdirected herself in law, in failing to acknowledge that the burden of proof lay on the Respondent to establish on a balance of probabilities that the Appellant was a national of Ethiopia. Even if that represents the law accurately, the judge has not made any positive finding that the Appellant is in fact a national of Ethiopia. She has instead rejected the Appellant's proposition that she is a national of Eritrea. I do not find that the judge has erred in-law in failing to identify any relevant burden on the Secretary of State to establish that the Appellant is of a particular nationality.

25. I find that there is nothing in the suggestion that the judge has erred in law in relation to the assessment of very significant obstacles to

integration into Ethiopia. I accept that it would have been preferable for the judge to have made a reference to the correct test of 'very significant obstacles to integration' rather than 'insurmountable obstacles to integration' as the judge set out. However, the finding that para 276ADE(1) was not satisfied was made in the context in which the Appellant had, in the judge's view, failed to give accurate information as to her national origins.

26. In relation to Mr Howard's submission, made for the first time in the hearing before me, that the judge had erred in law in failing to make any findings on the evidence set out in the witness statement of the Appellant's friend Mr G G, this matter was not raised in the Appellant's grounds of appeal, and is not Robinson obvious. In any event, I have rejected the Appellant's challenge against the judge's decision in all other respects, and this point alone would not, even if it were established that the judge erred in law in relation to the alleged failure to advert to the evidence of Mr G G, have made any material difference to the outcome of the appeal.

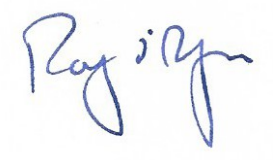
27. In all the circumstances I find that there is no material error of law in the judge's decision.

Notice of Decision

The decision did not involve the making of any material error of law.

The Appellant's appeal is dismissed.

Signed Date 20.11.19

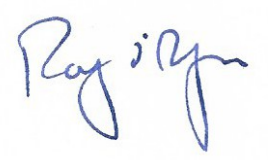


Deputy Upper Tribunal Judge O'Ryan

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 him or any member of their 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 20.11.19



Deputy Upper Tribunal Judge O’Ryan