Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number IA/02433/2020**
(PA/52562/2020)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	**Decision & Reasons Promulgated**
On 8 March 2022	**On the 30 March 2022**

Before

UT JUDGE MACLEMAN

Between

ABEL MARSHAW TSEGAW

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K H Forrest, Advocate, instructed by JK Law, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims to be a citizen of Eritrea, born on 12 June 1990.

2. In a decision promulgated on 26 August 2017 (PA/10543/2016) FtT Judge McGavin (appeal reference PA/10543/2016) found that the appellant failed to show that he is Eritrean, or a Pentecostal Christian, and that he was at no risk on return to Sudan, his country of habitual residence.

3. The appellant made further submissions. In a decision dated 5 November 2020, the considered that further documentary evidence did not establish

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that the appellant is Eritrean, and that he could return either to Ethiopia, being a native, or to Sudan.

4. The appellant's further appeal to the FtT was dismissed by the decision of FtT Judge Sorrell, promulgated on 15 September 2021.

5. The appellant relied on two new items of evidence. Her grounds of appeal to the UT at [2.2] expressly take no issue with the treatment of the first, a witness statement, at [23 – 24] of the decision. Mr Forrest said that the challenge is contained in [2 – 3] of the grounds, where they say:

> 2.2. [the Judge] has erred in so far as she treated the issue arising out of the second item as having been settled by the first Judge. Esto that is not what she did … she still erred in law … for the reasons below.
>
> 3. The Judge erred … because the reasons … for attaching little weight to the second [item] were irrational because:
>
> 3.1 The issue she begins to address in the second sentence of [28] are the circumstances in which this evidence was obtained and the appellant's role in so doing. Her reasoning *might* have been sound if he had coached these witnesses into giving substantive and potentially far-reaching evidence about his nationality, but all he did was tell them how old he was. Although correct that such evidence was *" … generated by the appellant …"*, it did not affect what they said about his nationality.
>
> 3.2 The observation that the document … was a copy is irrelevant in absence of any other evidence (e g that such evidence can easily be obtained from Eritrea fraudulently / untruthfully) which might undermine its reliability, but no such evidence is referred to by the Judge.

6. The grounds say finally at [4] that if the foregoing is correct, the decision cannot stand because the second Judge simply followed the first Judge.

7. The respondent filed a response, dated 24 November 2021, to the grant of permission. This is along the lines that the FtT correctly applied *Devaseelan*. Its main point is that there was no reason for the appellant not producing the evidence at the first hearing "given he knew the case against him was a dispute as to his nationality."

8. The translation of the new evidence is at page E1, or page 22, of the respondent's bundle. Three persons together confirm before an advocate that the appellant "was born to his father Mersha Tsegaw and his mother Asnenfech Hagos in Assab on 12/06/90 and that both his parents and himself are Eritrean citizens." That is all the document says.

9. Judge Sorrell at [28] noted that the appellant said that he "did not dictate what the three individuals should testify to" but that he had asked them to verify that he was born in Eritrea and told them his date of birth, "even though he could not be certain that they knew him and his parents when he was born."

10. The Judge's view was that despite evidence that the statement was "not dictated" it was "effectively generated" by the appellant.

11. The statement contains nothing of significance beyond the bare information conveyed by the appellant. It does not explain whether or how the witnesses could verify it from their own recollections.

12. There was no evidence that unreliable statements are more likely to come from Eritrea than anywhere else, but nor there was nothing to suggest they are less likely. The possibility of information in a statement sworn before a lawyer being more or less likely to be true on a country-by-country basis is rather far-fetched, and was not put in issue.

13. There is also force in the respondent's submission that although the statement by the 3 witnesses did not exist at the time of the first hearing, there was no explanation for evidence of that nature not having been sought at that time, when the issue was plain.

14. I see nothing in the *Devaseelan* principles or in the grounds which discloses any error by the Judge in deciding at [28] to give this item of evidence "minimal weight".

15. In any event, any error on this issue could not alter the outcome. The case has always required the appellant to exclude the possibility of his return either to Ethiopia or to Sudan. Judge Sorrell at [33] found no risk of persecution on return to Sudan "the country of his habitual residence and where his wife and aunt still reside". At [35] she concluded similarly on humanitarian protection. The appellant has not suggested any error in these conclusions.

16. The decision of the FtT shall stand.

17. The FtT made an anonymity direction, but for no specific reason. No application for ongoing anonymity was made to the UT. There is no apparent justification for departure from the principle of open justice. This determination is not anonymised.

H Macleman

11 March 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.