IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004394

First-tier Tribunal Nos: PA/52560/2022
IA/16586/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16th of April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

RTK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Hussain, Legal Representative, Fountain Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 15 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant claims to be a national of Eritrea , born on the 27 June 1991, two years before Eritrea came into being. Therefore, at the time of her birth she was born in Ethiopia. The Appellant arrived in the United Kingdom on 13 June 2018 and claimed asylum. She claimed that she had left Eritrea when she was 2 years of age and was subsequently removed from Ethiopia back to Eritrea in 2002 aged 11 where she lived for two years before escaping via Sudan and Libya. She also claimed to be from a Pentecostal Christian family.

2. The Appellant's asylum application was refused in a decision dated 22 June 2022, she appealed against that decision and her appeal came before the First-tier Tribunal for hearing on 10 July 2023. In a decision and reasons dated 17 July 2023, the appeal was dismissed.

3. The Appellant sought and was granted permission to appeal by Upper Tribunal Judge Jackson on 7 December 2023. The grounds of appeal asserted that:

   (i) there was inadequate reasoning provided by the judge for rejecting the Appellant's claim to be Eritrean;
   (ii) the judge failed to make findings on material matters and failed to make clear findings as to whether the Appellant is a Pentecostal Christian and whether the requirements of paragraph 276ADE(vi) of the Immigration Rules was met; and
   (iii) the judge failed to apply section 55 of the BCIA 2009 in relation to the Appellant's two children.

4. Permission to appeal was granted on the basis it was just arguable that the reasons for finding the Appellant was not Eritrean but Ethiopian are not sufficiently clear and that there was no clear finding as to religion. The judge also opined that the section 55 ground was very weak.

Hearing

5. Mr Hussain sought to rely on the grounds of appeal. He submitted that the judge did not give proper consideration to the Appellant's basis of claim. The judge criticised the Appellant for not going to the Embassy, however, the Appellant's evidence was that her father was killed by the authorities and therefore it was not possible for the Appellant to go to the same authorities. He submitted the judge did not properly consider that the Appellant was only 1 year of age at the time she left Eritrea and only returned there for two years at the age of 11. The Appellant's evidence was that her parents spoke Amharic and that is the language she knows. She does know some Tigrinya and the judge has not given any reasoning as to why he concluded that she does not. At [19] the finding is that her knowledge of Tigrinya was limited and the judge should have been mindful of the Appellant's history. Mr Hussain submitted that throughout the determination and in particular at [23] the judge does not make clear findings, for example, it is not clear why the Appellant's age plays any part in the consideration. He submitted the Appellant has been consistent in her account and there was an absence of clear findings as to why the judge found the Appellant to be Ethiopian and not Eritrean.

6. In his submissions, Mr Clarke asserted firstly, that the judge at [13] had essentially made a slip, in that the issue was not whether the Appellant should have attended the Eritrean Embassy but rather the point taken by the Secretary

of State in the refusal decision and addressed by the Appellant in her witness statement was that she should have gone to the Ethiopian Embassy: see Appellant's bundle page 322, page 13 of the refusal decision, which provides:

> *"You have not provided any evidence, documentary or otherwise, to demonstrate that you have attempted to apply for Ethiopian nationality or that you are not entitled to it, by contacting the Ethiopian embassy. This procedure poses no risk to you and can only be considered to be to your advantage."*

7. In her witness statement AB 42 at [10] the Appellant stated with regard to [12] of the refusal, *"In relation to applying to the Ethiopian Embassy I am an Eritrean national. Even if I go to the Ethiopian Embassy I have no evidence to provide to them"*. Mr Clarke reminded me that the Appellant went to school in Ethiopia. He submitted there would have been documentation according to the Secretary of State's case in reliance upon the Canadian Immigration and Refugee Board and that the Appellant has failed to produce it. He submitted that all the judge was saying, aside from the slip in mentioning the Eritrean Embassy instead of the Ethiopian Embassy, is that following the guidance set out in ST (Ethnic Eritrean – nationality – return) Ethiopia CG [2011] UKUT 252 (IAC) at headnote (5) the Appellant should have gone to the Ethiopian Embassy and explained that she went to school in Ethiopia. He submitted that the Secretary of State's position is that the Appellant is entitled to Ethiopian nationality and would have been granted it had she applied for it. He submitted that there was no evidence that the Appellant is an Eritrean national.

8. Mr Clarke submitted that what the judge did at [19] was to deal with the alleged religious identity and nationality in turn and that those findings are intertwined. He submitted that it is clear the way the Appellant relies upon her religion as part of her identity and that language also plays a considerable part in the consideration. The Appellant cannot speak Tigrinya and the judge fully took into account her evidence about this.

9. Mr Clarke then summarised the Appellant's claim, emphasising the fact that because she comes from a Pentecostal background and asserted that her father was a pastor, that her knowledge of Pentecostalism should have been much better. He submitted that it was sustainable for the judge to take a point adverse to the Appellant on that issue.

10. In relation to language and the Appellant's claim to have limited exposure to Tigrinya the Appellant was living with her parents from 2002 to 2003. The background evidence shows that Tigrinya is taught to children. The Appellant asserted that the interpreter failed to translate properly in interview and the judge was mindful of this. Mr Clarke further submitted there was no basis for finding there will be very significant obstacles to the Appellant's integration on return and this was clearly implicit in his finding at [24] in relation both to the religious and nationality claims. He submitted that this was a sustainable finding.

11. I clarified with Mr Hussain that he was not seeking to rely on his third ground of appeal with regard to section 55, which he confirmed and therefore I had no need to hear from Mr Clarke on this issue.

12. In his reply, Mr Hussain submitted that there had been no slip of the pen, the judge referred to Eritrea in two paragraphs and he submitted it was clear the judge's understanding of this point was distorted and unsustainable. In relation

to the two ladies who ultimately brought up the Appellant he submitted that they were not relatives of the Appellant and there was no expectation that they would sit with her on a regular basis and explain Eritrean history, culture and language and he submitted the judge had drawn an incorrect inference from this evidence. He submitted that the Appellant has always said that she does not have any evidence whatsoever of nationality and has given reasons why she is unable to go to the Ethiopian Embassy, see page 42, [10] to [12], essentially because she has no evidence. She was born in what then became Eritrea and her parents were Eritrean.

13. In relation to the issue of the Appellant's religion, Mr Hussain submitted the judge was incorrect to reach his decision in relation to that issue given that the Appellant was currently attending the church of the pastor who gave evidence and that the judge had accepted at [16] that this was a Pentecostal Church.

14. I reserved my decision, which I now give with my reasons.

Decision and reasons

15. I find material errors of law in the decision and reasons of the First tier Tribunal Judge for the reasons set out in the grounds of appeal. In particular, whilst as Mr Clarke submitted, it may have been a "slip" by the judge in referring to the Appellant's failure to attend the Eritrean Embassy, rather than the Ethiopian Embassy, this is a matter which goes to the heart of her case that she is of Eritrean rather than Ethiopian nationality. The judge did not apply the reasoning and analysis set out in ST (Ethnic Eritrean – nationality – return) Ethiopia CG [2011] UKUT 252 (IAC) or provide adequate reasons for finding that the Appellant is Ethiopian.

16. I further find that the judge did not make sufficiently clear findings as to the Appellant's religion. Whilst at [20] and [21] the judge considered the Appellant's claim to be a Pentecostal Christian, he did not expressly reject this claim but found that her lack of knowledge of Pentecostalism and the central tenets was "suprising" and that the evidence of the Pastor did not provide much assistance as it went only to her Church attendance rather than the nature of her faith. The judge also noted at [14] that the Appellant attended a different church from that when she was first questioned, but failed to weigh up the fact that she has been attending a Pentecostal church since 2018, also referred to in the evidence of Pastor Daniel at [14]. Again, given that the nature of her Pentecostal Christian religion is a key element of the Appellant's asylum claim, a clear finding on this point is required.

17. Whilst less emphasis has been placed on the argument that removal of the Appellant (to Ethiopia) would be contrary to paragraph 276ADE(vi) of the Rules (now Appendix Private Life) given that the Appellant has resided in the United Kingdom since 2018 and claims to have spent very limited time in Eritrea and limited time in Ethiopia, I consider that more was required by way of reasoning than that provided at [24] that: "*There is no evidence that any of the family have particular needs, medical or otherwise, or that they would be unable to establish themselves in Ethiopia or access the usual services or education.*" Any finding on this aspect of the claim is predicated upon a finding in respect of the Appellant's nationality so this will also require consideration.

18. Similarly, whilst it is unclear what arguments were put forward in relation to the section 55 of the BCIA 2009 and the judge found at [24] that evidence of the Appellant's family life and family in the UK is very limited, given the Appellant has two minor dependent children their best interests require consideration but were not considered by the judge.

Notice of Decision

19. In light of the fact that findings of fact on the key aspects of the Appellant's nationality and religion are required, I set aside the decision and reasons of the First tier Tribunal Judge and remit the appeal for a hearing *de novo* before the First tier Tribunal, with no findings of fact preserved.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 April 2024