



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/00651/2014

**THE IMMIGRATION ACTS**

**Heard at Newport**

**Determination**

**On 10 July 2014**

**Promulgated**

**Delivered orally**

**On 16 July 2014**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**LK  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Smeaton of Blavo & Co Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REMITTAL**

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).
2. The appellant claims to be an Eritrean national who was born on 23 September 1990. She claims to be a Pentecostal Christian and at risk on

return to Eritrea. She arrived in the United Kingdom on 8 December 2013 and claimed asylum that day. She claimed that she had a well founded fear of persecution based on her religion and/or her imputed political opinion.

3. The appellant underwent a screening interview on 8 December 2013 which was conducted in the language of Tigrinya which is a language associated with Eritrea. She subsequently underwent a full asylum interview on 3 January 2014 which was conducted in Amharic which is predominantly the language spoken in Ethiopia. On that same day the appellant was also interviewed over the telephone by an analyst from Sprakab and a report dated 7 January 2014 was produced as a result.
4. On 6 January 2014 the Secretary of State refused the appellant's claim for asylum and for humanitarian protection and on the basis that she had a right to remain in the United Kingdom under Article 8. Central to that decision was the Secretary of State's view that the appellant was not an Eritrean national but a national of Ethiopia who came from the Tigre region of Ethiopia.
5. As a consequence on 14 January 2014 the Secretary of State refused the appellant leave to enter and proposed removal directions to Eritrean or Ethiopia. The appellant appealed to the First-tier Tribunal against that decision.
6. The appeal was heard on 3 March 2014 by Judge Knowles. In his determination, having considered all the evidence including the Sprakab report, in paragraph 65 he said this:

“Looking at all the evidence in the round I have no reason to reject to conclusions reached in the Sprakab report. I find the appellant has not proved that it is reasonably likely that she is a national of Eritrea. In my view the probability is that she is an Ethiopian national”.
7. He also made a number of credibility findings against the appellant.
8. The appellant sought permission to appeal to the Upper Tribunal and on 7 April 2014 the First-tier Tribunal (DJ Coates) granted the appellant permission to appeal. Thus the appeal came before me.
9. Ms Smeaton who represented the appellant relied on the grounds and a detailed skeleton argument in which she developed a number of grounds which she invited me to conclude amounted to errors of law such that the Judge's decision could not stand. Her submissions focussed upon the Judge's reliance upon the Sprakab report. Having done so Mr Richards, who represented the Secretary of State, acknowledged that the Judge may have misunderstood the report or at least not given sufficient consideration to it so as to explain and justify his conclusion that it established that the appellant was an Ethiopian rather than an Eritrean national.

10. The basis for Mr Richards' acceptance of that is derived from the submissions that Ms Smeaton made in relation to the report which states a number of matters. It states at 1.1 that the speaker's linguistic background is assessed to be ("high") "Ethiopia, among Eritreans". It then states in 1.2 that the speaker's linguistic background of being Eritrean is "unlikely". At 1.3 the report states that:

"the speaker has mastered Tigrinya on a native speaker level. The language used was not congruent with that of native speakers in Eritrea. The language used was congruent with the language used among Eritreans in Ethiopia. The speaker's stated linguistic background is assessed to be unlikely."

11. There are then further observations by the writer of the report which, Ms Smeaton submitted, were entirely consistent with the appellant's case rather than the respondent's case, namely that she is an Eritrean speaking Tigrinya in Ethiopia. So, in 2.3 the grammatical features of the appellant's speech are said to be "congruent with Tigrinya as spoken among Eritreans in Ethiopia" (see also 2.4 – lexical features). In relation to her use of Amharic words when speaking Tigrinya this is said to be "typical of Eritreans in Ethiopia" (see 2.4).
12. The appellant's case is that she is an Eritrean who lived for a time amongst Ethiopians. Her case is that she was born and lived in Sessa in Eritrea where she lived until she was two. She then moved to Ethiopia where she lived until she was 9 years old and she attended school there. Her evidence was that during the course of the war she was deported at the age of 9 from Ethiopia to Eritrea and then lived in Assab.
13. In my view Mr Richards' concession is entirely properly made in this case. Putting it at its lowest the Sprakab report is unclear as to precisely what is the appellant's nationality. Putting it at its highest it is mostly consistent with the appellant's claim to have been an Eritrean who lived amongst Ethiopians as she claimed to do between the ages of 2 and 9 when one might assume her linguistic abilities and skills developed before being deported back to Ethiopia. It is clear to me that the Judge may have over-read or misread the report so as in paragraph 65 of his determination to conclude, on the basis of the Sprakab report, that the appellant was likely to be a national of Ethiopia and not a national of Eritrea.
14. For completeness I should also note that the Judge relied on the Sprakab report in relation to knowledge issues – on which little detail of the enquiry is given in the report – which is problematic after the Supreme Court's decision in SSHD v MN and KY [2014] UKSC 30.
15. Leaving that aside, it is accepted by the Secretary of State that the Judge erred in law in relying on the Sprakab report without properly explaining why it supported his conclusion that the appellant is Ethiopian rather than Eritrean. It was a central part of his reasoning in finding adversely against the appellant on her nationality and more generally in relation to her credibility.

16. For those reasons, I agree with the concession made by Mr Richards that the Judge's decision is legally flawed.

## **Decision**

17. The decision of the First-tier Tribunal to dismiss the appeal involved the making of an error of law. The decision cannot stand and is set aside.
18. Having regard to the nature of the fact-finding required and para 7.2 of the Senior President's Practice Statement, the appeal is remitted to the First-tier Tribunal for a *de novo* rehearing by a Judge other than Judge Knowles.

Signed

A Grubb  
Judge of the Upper Tribunal

Date: