



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

Appeal Number: AA/07931/2013

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport**

**Determination  
Promulgated**

**On 6 May 2014**

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**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**H G  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr L Garrett instructed by Aston Carter Solicitors  
For the Respondent: Mr K Hibbs, Home Office Presenting Officer

**DECISION AND REMITTAL**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

**Introduction**

2. The appellant was born on 26 October 1987 and claims to be a citizen of Eritrea. She arrived in the United Kingdom on 21 June 2013 and claimed asylum. On 19 July 2013, the Secretary of State refused the appellant's

claim for asylum and made a decision to remove her as an illegal entrant to Eritrea/Ethiopia by way of directions under paras 8-10 of Schedule 2 to the Immigration Act 1971.

3. The appellant appealed to the First-tier Tribunal. In a determination dated 25 September 2013, Judge S Meah dismissed the appellant's appeal on all grounds. Judge Meah did not accept that the appellant was an Eritrean national and, in addition, found her not to be a credible witness. As a consequence, the judge rejected the appellant's claim to be at risk in Eritrea either on the basis of being a Pentecostal Christian or because she had left Eritrea illegally. The judge concluded that there was no basis upon which the appellant could claim to be at risk in Ethiopia.
4. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds, challenging the judge's finding that she had not established that she was an Eritrean national, his adverse credibility finding and that she would not be at risk if returned to Ethiopia.
5. On 18 October 2013, the First-tier Tribunal (Judge Saffer) granted the appellant permission to appeal to the Upper Tribunal on the following grounds:

"It is arguable that the judge erred in determining the issues of nationality prior to considering the evidence of the witness, and attached undue weight to her language skills. All grounds may be argued."

6. Thus, the appeal came before me.
7. Mr Garrett relied upon the grounds of appeal and made a number of submissions challenging the judge's finding that the appellant had not established she was an Eritrean national and in making an adverse credibility finding.

## **Discussion**

8. At the conclusion of the parties' submissions, I indicated that I was satisfied that the judge had materially erred in law in reaching his findings and that his decision cannot stand. My reasons are as follows.
9. First, the judge considered at paras 9-15 whether the appellant had established that she was an Eritrean national. He was not so satisfied. Having done so, at paras 16-20, the judge went on to consider what he described as the appellant's "general credibility". In truth, the issue of the appellant's nationality could only properly be considered in the context of the credibility of her evidence as a whole. It was, in my judgment, wrong to compartmentalise the issues of her nationality and credibility in this way.
10. Secondly, in determining the appellant's nationality, the judge placed significant reliance upon the fact that the appellant spoke Amharic (the language of Ethiopia) and could not speak Tigrinya (the language of

Eritrea). The judge's reasoning is at paras 10-12 of his determination as follows:

"10. The appellant's spoken language is Amharic which is the national language of Ethiopia. She does not speak Tigrinya which is the national language of Eritrea despite stating that this was her late father's main language and the fact that she had claimed to live in Eritrea for two years. She does not speak Tigrinya as a second language either and she does not speak any of the other Eritrean languages. She stated there were 360 islands in the bay of Assab when in fact there are only 30. She incorrectly stated that the nearest town to Assab is Mendefera and she could not give the name of the street in which she lived in Assab and had little knowledge about Assab generally.

11. It was the appellant's claim that she did not go to school in Eritrea during the two years she lived there, despite schooling being available free of charge, on account of having to care for her father who was paralysed prior to his death. The respondent stated that this was being used as an excuse to cover up the fact that the appellant could not prove that she was genuinely an Eritrean national. I agree with the respondent and I shall now explain why I find incredible the appellant's claim that she is Eritrean.

12. Firstly, I find it incredible that the appellant would not speak Tigrinya given that she spent two years there. I find that this, alongside the fact that her father would have spoken this as his first language, means it is reasonable to expect that she would also have spoken Tigrinya at least as a second language if she is genuinely of Eritrean origin."

11. In my judgment, the judge's reasoning for rejecting the appellant's evidence that she could not speak Tigrinya is inadequate. On the appellant's account, she was deported from Ethiopia to Eritrea when she was 13 years old and only spent two years there. Her father spoke Amharic (the language of Ethiopia). In my judgment, the judge was not entitled to find that it was "incredible" that having only lived in Eritrea for two years prior to 2002, and given that her father spoke Amharic, that she would not now be able to speak Tigrinya as a second language.

12. Thirdly, at the hearing the appellant called a witness, ("RB") to give evidence on her behalf. RB gave evidence that she had known the appellant between 2000 and 2001 when their families had lived next door to one another in Eritrea after the appellant and her father had been deported from Ethiopia. RB also gave evidence that subsequently, having returned from Sudan where she had gone with her father, the appellant's aunt told RB that the appellant's father had died and that RB had been detained.

13. The judge dealt with the evidence of RB in paras 18 and 19 of his determination as follows:

"18. Turning to the evidence of the appellant's claimed friend [RB], she stated she knew the appellant when they were both young as they had spent time together in Eritrea by virtue of being neighbours. Her evidence was in an effort to corroborate the appellant's claim to be an Eritrean national.

19. Firstly, I am not prepared to attach any weight to [RB]'s evidence given my doubts about the appellant's overall credibility and my significant doubts about the substance of the claim. I find to this end that [RB]'s evidence is likely to have been designed simply to corroborate the appellant's claim rather than there being any real truth to what she stated. I also found incredible [RB]'s response that the appellant had told her about her father's death yet when Ms Ololade had asked the appellant several times whether she had told [RB] about the death her repeated responses were vague and inconclusive and the essence of it was that she was not sure whether she had told [RB] about her father's death. I found this discrepancy between the evidence of the two of them to be incredible."
14. Whilst the judge did give some reasons for doubting the credibility of RB's evidence, the first sentence of para 19 makes plain that he placed no weight on her evidence given that he had already formed an adverse view on the appellant's overall credibility. In my judgment, in that latter regard the judge fell into error. RB was a witness of fact and the appellant's credibility could only properly be determined taking into account what was, on its face, supporting evidence from RB. The judge could not, as he clearly does in the opening sentence of para 19, disregard RB's evidence simply because he did not believe the appellant. RB had, herself, been recognised as a refugee in the UK. It is difficult to see the basis upon which the judge considered that RB's evidence was "designed simply to corroborate" the appellant's claim, rather than "there being any real truth to what she said".
15. Although Mr Garrett relied upon the judge's reference in para 14 to the evidence of the appellant as to how she obtained a "passport" from Eritrea as a material error of fact, it is clear that that is simply a typographical error as in both para 13 and the remaining sentence of para 14, the judge is correctly dealing with the appellant's evidence of how she obtained a "birth certificate".
16. Nevertheless, the judge did fall into error in a number of respects in reaching his adverse findings on the appellant's nationality and her credibility. Although he does give other reasons for his findings, I am not satisfied that without these errors his findings would have been the same and, therefore, I am satisfied that the errors were material to his decision.

## **Decision**

17. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. The decision cannot stand and I set it aside.
18. Both representatives accepted that in the light of my decision, the proper course was for the appeal to be remitted to the First-tier Tribunal for a *de novo* hearing before a different judge of the First-tier Tribunal. Having regard to the nature of the fact-finding required, and in the light of para 7.2 of the *Senior President's Practice Statement* the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing. The

appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge S Meah.

Signed

A Grubb  
Judge of the Upper Tribunal