



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

Appeal Number: AA/10245/2014

THE IMMIGRATION ACTS

Heard at North Shields

**Decision and Reasons
Promulgated**

On 26 June 2015

On 2 July 2015

Prepared on 26 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**V. T.
(ANONYMITY DIRECTION)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rasoul, Counsel instructed by Blavo & Co Solicitors

For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant entered the United Kingdom illegally and claimed asylum on 24 July 2014. That application was refused on 12 November 2014, and in consequence a removal decision was made in relation to her.
2. The Appellant appealed to the Tribunal against the removal decision and her appeal was heard on 7 January 2015, and dismissed by decision of Judge Trotter, promulgated on 2 March 2015. He was

not satisfied that she was an Eritrean citizen as she had claimed to be, having found that her evidence had not been truthful.

3. The Appellant's application to the First Tier Tribunal for permission to appeal, as drafted, raised two complaints; (i) that the Judge had not given adequate reasons for his rejection of the report of Mr Price a Consultant Psychologist, and (ii) that the Judge had not given adequate reasons for his findings in relation to the Appellant's claim to be member of the Pentecostal Church. That application was granted by Judge Chohan on 18 May 2015.
4. The Respondent filed a Rule 24 Notice of 5 June 2015 in which she asserted that the Judge had given adequate reasons for his adverse credibility findings and that it was plain from a fair reading of the decision that the report of Mr Price had not been overlooked.
5. Thus the matter comes before me.

Error of Law?

6. Ms Rasoul accepted that if the Appellant was an Ethiopian citizen as the Judge had found her to be, then she was not at risk of harm if she were perceived upon return to that country to be a Pentecostal Christian. Thus the arguments advanced focused upon the rejection of the claim to be an Eritrean citizen.
7. During the course of the hearing it emerged that the word "uncle" in line 9 of paragraph 21 must be a typographical error. Ms Rasoul accepted that it was of no consequence, and that this paragraph should be read as if the word were struck through.
8. Despite the terms in which she had drafted the grounds of appeal, Ms Rasoul accepted that the Judge had in fact made no finding in the course of his decision which had rejected Mr Price's report out of hand. The premise upon which the first ground was drafted was therefore flawed.
9. Ms Rasoul also accepted that the Judge had made reference to Mr Price's report in both paragraph 8¹, paragraph 15, paragraph 19 and paragraph 20 of his decision. She accepted that she did not therefore seek to advance the proposition that either the existence or the content of that report had been overlooked.
10. Ms Rasoul also accepted that in the course of his report Mr Price had not offered a formal diagnosis of any mental health condition suffered by the Appellant. The highest that his report went was to offer the opinion that the flashbacks and nightmares that she had reported to him were recognised symptoms of PTSD. He did not offer a diagnosis of PTSD, and the evidence before the Judge did not

¹ The reference to "very understandable reasons" for her inability to give a clear chronology of events.

suggest that any other expert qualified to do so had offered such a diagnosis. Thus, contrary to the argument that Ms Rasoul had advanced when drafting the grounds, Mr Price had not offered his expert opinion that a diagnosed condition of PTSD was responsible for the Appellant's inability to give details of her experiences in Eritrea.

11. Instead Ms Rasoul argued before me that because Mr Price had found the Appellant to be a consistent and credible historian, and had concluded that she was telling him the truth when recounting her experiences, the Judge was obliged to reach the same conclusion. It is clear from his report that Mr Price considered that his role was not limited to that of offering an expert opinion upon whether the Appellant was suffering from any recognised mental health condition, and that instead his proper role was to advise the Tribunal upon whether he believed the Appellant to be telling the truth in all aspects of her account. I have not seen any letter of instruction, so I cannot say whether or not he was led into this course by those who instructed him. It is however perfectly clear that he ventured far beyond his proper remit as an expert, and not only strayed into the function of the Tribunal, but sought to discharge that function for himself, in seeking to offer an opinion on the issue of whether the Appellant was a truthful witness on issues that were not obviously within his sphere of expertise.
12. When pressed on whether this argument was actually open to her, it is fair to say that Ms Rasoul resiled from it, and she accepted instead that the weight to give to any item of evidence was a matter for the Judge, and that the Judge was not bound to accept any of Mr Price's conclusions.
13. In those circumstances I asked Ms Rasoul to summarise how she argued the Judge had erred. In response Ms Rasoul advanced the complaint that in paragraph 21 of his decision the Judge had given inadequate reasons for the conclusion that the Appellant was not from Eritrea. In so doing it was clear that she sought to take paragraph 21 of the decision in isolation from the remainder. That is not a legitimate approach. The Judge is entitled to have his decision read as a whole.
14. In this case, as the Judge recognised and recorded, the Appellant faced serious credibility issues. She had failed to make application for asylum in either Italy or France, and had claimed in explanation to have spent only one day in either country [14]. She had not given a credible account of how her travel to the UK had been financed, or who had done so. Indeed Ms Rasoul accepted before me that upon the evidence before him the Judge was perfectly entitled to find that she had displayed a "substantial degree of dishonesty" in her evidence about how she had travelled to the UK, and how this had been financed [23]. That finding was plainly made in the light of the

submissions made by the presenting officer upon the Appellant's evidence that the Judge had recorded at some length [16].

15. Moreover when she had first been interviewed the Appellant had denied knowledge of any language other than Amharic, despite claiming to have lived in Sudan for about 11 years, and in Libya for a further 18 months (much of it in detention). Although from birth to the age of 22 she always claimed to have lived with relatives who were Eritrean, and had also claimed to have lived in Eritrea from the age of 9 to the age of 11, she had then denied the ability to speak Tigrinyan. The Judge noted that she had inconsistently claimed to have been able to speak both some Tigrinyan and some Arabic under cross-examination. Her explanation for not having previously claimed to be able to do so being that she felt her communication level in both languages was low.
16. In these circumstances the criticisms advanced of the decision are in reality no more than a disagreement with the Judge's conclusions on whether the Appellant is genuinely a citizen of Eritrea as she had claimed to be. Another Judge might have expressed himself differently, or rehearsed the evidence before him in greater detail, but the approach taken to the evidence in this decision does not disclose any error of law that requires the decision to be set aside and remade.

Conclusions

17. Not only is there nothing wrong with the Judge's reasoning on the issue of whether the Appellant had discharged the burden of proof that lay upon her to establish her claim that she is a citizen of Eritrea, but it is adequately set out in his decision; MK (Duty to give reasons) Pakistan [2013] UKUT 641.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 2 March 2015 contains no error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 26 June 2015

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings

shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 26 June 2015