



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

**Appeal Number:  
AA/00487/2016**

**THE IMMIGRATION ACTS**

**Heard at: Columbus House,  
Newport  
On: 25 August 2017**

**Decision & Reasons  
Promulgated  
On: 11 September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**TY**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Webb, NLS Solicitors  
For the Respondent: Mr A McVeety, Senior Home Office  
Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Richards-Clarke in which the Judge dismissed the appeal of the Appellant, who claims to be a citizen of Eritrea, against the Secretary of State's decision to refuse asylum and set removal directions.
2. The Appellant arrived in the United Kingdom on 31 October 2013 and claimed asylum the following day. His application was refused by the Respondent on 1 September 2014. The Appellant

exercised his right of appeal against this decision and this is the appeal that was heard before Judge Richards-Clarke on 10 November 2016 and dismissed. The Appellant's application for permission to appeal against the First-tier Tribunal Judge's decision was granted on 20 December 2016 by First-tier Tribunal Judge Saffer in the following terms

It is arguable that the Judge has erred in that where the Appellant was asked questions about Eritrea and got them right it is unfair to say he learned them from the public domain, as if that is correct, the Respondent should ask better questions. He should have been given credit for that rather than it being a fact that was neutral. It is also arguable that inadequate reasons were given for rejecting the evidence of the witness who claimed to have known him from Eritrea and was not just reporting what he had allegedly been told. These could amount to material errors of law.

All grounds may be argued.

3. By a rule 24 response dated 6 January 2017 the Respondent opposed the appeal arguing that the thrust of the appeal is nationality and that the significant reason given for finding the Appellant not to be an Eritrean national was the language analysis and that the other matters of knowledge of Eritrea and the witness are minor points not material to the overall finding.
4. At the hearing before me Mr McVeety appeared for the Secretary of State and Mr Webb represented the Appellant.

### Background

5. The Appellant is 30 years old and claims to be a citizen of Eritrea and a Pentecostal Christian. According to his account he was born in Eritrea and moved with his family to Ethiopia when he was 2 years old. The family, as Eritreans, were deported to Eritrea in 2000 (when the Appellant was 14) where they lived in Assab. In January 2004, the Appellant was arrested whilst worshipping with others at a home prayer meeting. After being detained and abused for 6 days the Appellant was released on payment of a bribe. On his release, the Appellant made his way to Sudan where he lived for about 6 years before travelling via Turkey, Greece and other countries to the UK.
6. The Respondent accepts that the Appellant is a Pentecostal Christian but does not accept that he is Eritrean. This is primarily, according to the rule 24 statement, because he speaks Amharic and a language analysis concludes that the way that he speaks Amharic indicates that he is of Ethiopian origin.

7. In dismissing his appeal, the First-tier Tribunal Judge found that the Appellant's claim turned on his nationality. The Judge found that the linguistic analysis along with his lack of knowledge of life in Eritrea and the lack of supporting evidence caused her to reach the conclusion that there was not a reasonable degree of likelihood that he is an Eritrean national.

### **Submissions**

8. Mr Webb referred to the grounds of appeal. The issues are language and nationality. The Judge found that the Appellant was not an Eritrean national because he spoke Amharic but failed to take account of his detailed witness statement explaining why that is the language he speaks. When considering everything in the round although the amount of weight to be attached to evidence is a matter for the Judge that does not mean that evidence can be ignored. The Appellant gives an account of being brought up in Ethiopia that is consistent with the fact that he speaks Amharic. So far as the witness is concerned the Judge appears to misunderstand his evidence. The witness knew the Appellant in both Ethiopia and Eritrea. There is no finding in this respect. The Judge does not engage with the Appellant's evidence only with the linguistic report. It must be wrong for the Judge to attach no weight to the Appellant's knowledge of Eritrea simply because it is in the public domain. Mr Webb went on to say that the Article 8 findings were also flawed and that evidence as to family life had not been fully considered.
9. For the Respondent Mr McVeety referred to the rule 24 response and said that the Judge was entitled to find that the Appellant's inability to speak the language of Eritrea was sufficient for him to reach the finding that the Appellant was not Eritrean. The weight to be given to the evidence is a matter for the Judge. The linguistic report is clear that the Appellant does not speak Amharic as an Eritrean would. Asked by me to highlight any parts of the linguistic report that engage with the Appellant's account of spending time in Ethiopia and in an Amharic speaking community in Eritrea Mr McVeety accepted that this was not addressed.
10. I said that the appeal would be allowed. The Appellant gives detailed reasons for his failure to speak Tigrinya in his witness statement. The Judge makes no findings on the chronological aspects of the Appellant's account and does not refer to his witness statement and explain why she does not accept the Appellant's account of why he speaks Amharic. The Judge appears to be mistaken in her assessment of the witness's evidence which appears to corroborate the Appellant's account. I reserved my written decision.

### **Error of law**

11. The Appellant's account is clearly given in his witness statement. He claims to be a person who was born in Assab in Eritrea to Eritrean parents. The family moved to Addis Ababa to live when he was 2 years old and this is where the Appellant went to school. Although his parents spoke Tigrinya they also spoke Amharic and this was the language the Appellant spoke at school and with his friends. When his parents spoke to him in Tigrinya he would respond in Amharic and they also spoke this language. The Appellant claims to understand Tigrinya and to be able to speak some words. The family was deported from Ethiopia to Eritrea in 2000 where they lived in Campo Sudan in Assab. It was here that he claims to have met the witness F M. The Appellant remained in Eritrea until January 2004 when, following an arrest and a short period of detention, he left the country and went to Sudan.
12. In finding that he was an Ethiopian national and not Eritrean as claimed the First-tier Tribunal Judge relied exclusively on a linguistic analysis report dated 8 April 2014. The Judge notes that the report concludes that the Appellant's linguistic background is Ethiopia with a high degree of certainty, that he spoke a variety of Amharic found in Ethiopia and that his speech did not display any features of Tigrinya which can be expected among Eritreans. The Judge notes that the report "does not solely rely on the language spoken by the Appellant" ... but also that he displayed "limited general knowledge about Eritrea". At paragraph 33 the Judge says, "In these circumstances I attach significant weight to the linguistic report"
13. The Appellant's witness statement addresses the linguistic report and seeks to explain in some detail why the Appellant speaks Amharic. Put simply it is the Appellant's case that his formative years were spent in an Amharic speaking environment in Addis Ababa and that even after return to Eritrea he lived in an Amharic speaking part of Eritrea with others recently deported from Ethiopia who also spoke Amharic. He also explains that his witness, who knew him both in Ethiopia and Eritrea, had also been deported from Ethiopia.
14. The Judge deals with the witness at paragraph 34 and 35 but concludes that his evidence "adds little weight to the Appellant's case" because "if true he is reporting what the Appellant has told him". In my judgement this is a fundamental misunderstanding of the witness' evidence. The evidence of the Appellant and the witness is that they knew each other in Addis Ababa, were deported from Ethiopia at the same time (if not together) and met again amongst the deportee community in Assab. This is corroborative of the Appellant's claim and should have been given considerable weight unless there was good reason not to do so. No such reason is given or indeed explored.

15. So far as the Appellant's explanation of why he speaks Amharic as he does is concerned the Judge does not really engage with this at all. There is no analysis of the Appellant's evidence and indeed no findings made as to the chronology of his account or the facts put forward. There is, for example, no analysis of how he might have come to be in Addis Ababa and Assab with the witness if the account that he gives is not true.
16. In my judgement the Appellant's account as briefly summarised above gives clear and plausible reasons why he speaks Amharic rather than Tigrinya and indeed why he speaks Amharic like an Ethiopian. In making her findings the Judge does not address any of the reasons given by the Appellant and as such does not make any findings that address those reasons. Indeed, the findings made seem to ignore or overlook the evidence of the Appellant and his witness.
17. In my judgment the apparent failure of the Judge to consider and address this evidence is a material error of law. It is possible that a Judge assessing the Appellant's evidence may have reached a different conclusion.
18. The effect of this error must be to render the credibility findings as a whole unsafe. Due to the nature of the error of law and in accordance with the President's direction it is appropriate for this matter to be remitted to the First-tier Tribunal for hearing de novo with no findings preserved although following MST and others (National Service - risk categories) CG [2016] UKUT 443 (IAC) the only real issue given the Appellant's age is likely to be his nationality. Article 8 will also be in play should the Protection appeal fail.

## **Conclusion**

19. The decision of the First-tier Tribunal involved the making of an error of law for the reasons set out above.
20. I set aside the decision of the First-tier Tribunal and in accordance with the President's direction this matter is suitable for and should be remitted to the First-tier Tribunal.

**Signed**

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large loop and a horizontal line extending to the right.

**J F W Phillips**  
**Deputy Judge of the Upper Tribunal**  
**8 September 2017**

**Date:**