



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01451/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

Decision & Reasons

On 4 October 2017

Promulgated

On 8 November 2017

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

N G

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Speirs
For the Respondent: Ms O'Brien

DECISION AND REASONS

1. The appellant was born in 1990. His claimed nationality of Eritrean is disputed by the Respondent.
2. The basis of his claim to asylum is, principally, that he converted from Islam to become a Pentecostal Christian in Eritrea. Also, that he had attended in the UK a demonstration against the Eritrean government.
3. The application was refused, in summary, for the following reasons. First, in respect of his claimed nationality he said he was from the Tigrinya ethnic group but although he spoke some Tigrinya which had been his parents' main language, his main language is Amharic, the national language of Ethiopia. The interview was in Amharic. He claimed that the reason he speaks Amharic is because his father used to move because of

work and his mother, when dealing with traders in Assab, spoke Amharic. However, the background material indicates that Tigrinya, Arabic and English predominate in commerce and not Amharic.

4. He claims to have been deported from Ethiopia because of the border conflict. Whilst the background information shows that during the Ethiopian occupation of Eritrea Amharic was the official language, many Eritreans refused to speak and learn it and continued to teach their children their native languages. Therefore, his claim to be an Amharic speaking Eritrean was inconsistent with accounts that many Eritreans refused to speak Amharic.
5. As for his claimed change of faith in 2001 there was a lack of evidence.
6. The political activity, attendance at a demonstration, was not solely against the Eritrean government but against racism as a whole.
7. He appealed.
8. Following a hearing at Glasgow on 10 April 2017, Judge of the First-Tier Green dismissed the appeal. He noted oral evidence from the appellant and a witness, Mr MA both in Amharic.
9. The crux of Judge Green's decision is at paragraph 12(i) where he found that the appellant had not discharged the burden of proving he is an Eritrean. He stated:

'(i) *I have noted the excerpt from the COI produced by Ms Speirs which provides that because of the legacy of Ethiopian domination over Eritrea, many Eritreans also speak Amharic (i.e. in addition to their mother tongue). However, it also goes on to say that Tigrinya and Tigre together are spoken by about 83% of the total population and are widely distributed throughout the country. Both languages serve as languages of interethnic communication. The COI recognises that many of the ethnic groups in Eritrea crossover into Ethiopia. I have noted from the objective evidence exhibited in the Appellant's first bundle that his claimed home area is Assab which is in the south-east of Eritrea bordering with Ethiopia and Djibouti. Notwithstanding this objective evidence, is it plausible and credible that the Appellant is Eritrean notwithstanding that he cannot speak Tigrinya? He claims that he moved from Assab to Addis Ababa with his family when he was three years old in 1993. At that age, he would be learning to talk and his immediate family, if they were Eritrean, would almost certainly have spoken Tigrinya. That would have been his mother tongue. Between 1993 and 2000, he claims that the family lived in Ethiopia until they were returned to Eritrea where they lived until 2003. He would have left Ethiopia when he was 10 years old. I struggle to see how he could have picked up Amharic whilst living in Ethiopia given his claim that he never went to school in that country or in Eritrea. His life would have been*

focused on the family home and if his parents were Tigrinya speakers then he would have continued speaking that language. This man cannot speak Tigrinya. He only speaks Amharic, the principle language of Ethiopia.'

10. The judge then went on to conclude that having not established that he is Eritrean the question of whether he is a Pentecostal Christian is 'essentially academic'. He noted additionally that no one had attended from the church in Glasgow. In the only comment on Mr MA's evidence he also states he can give it very little weight given his observations about the appellant's nationality. He finds that both might have attended the church but that such was not enough to establish that he had converted.
11. The appellant sought permission to appeal on the basis that the judge failed properly to consider the background material. In particular that it states that Amharic is spoken as a first or second language in Assab due to the Ethiopian dominance. As such it was not implausible that he could only speak Amharic. Also, the judge's comment that his immediate family would have spoken to him in Tigrinya was speculative.
12. Permission to appeal was refused but was allowed on re-application to the Upper Tribunal.
13. At the error of law hearing before me Ms Speirs essentially repeated the grounds. She added that the judge had also given no consideration to the evidence on this matter in the appellant's witness statement.
14. Ms O'Brien's response was that the judge had noted the background evidence and made findings which were open to him concerning the language used in the appellant's home.
15. I consider that the decision shows material error of law, specifically, that he failed to consider material evidence. His comment (at [12](i)) that his parents '*would almost certainly have spoken Tigrinya*', in my judgement, is speculation. The judge failed to engage with what the appellant said in his witness statement at [19] - [23] namely, that while his parents did indeed speak Tigrinya they also spoke Amharic. His father, a driver, used to travel to different parts of Ethiopia so he used to communicate in Amharic. His mother dealt with traders in Assab which is near the border with Ethiopia and which is why she communicated in Amharic. They also continued to speak some Tigrinya which is why he learnt some Tigrinya words.
16. The judge (at [12](i)) notes the appellant's claim that aged three he moved from Assab to Addis Ababa where he remained for seven years. However, he failed to consider his evidence that during that time his mother died and thereafter he had a carer who was an Ethiopian woman (Q34-36).
17. Further, the judge while he noted that the witness Mr MA gave oral evidence did not engage with his comments in his statement in which he

claims to have known the Appellant in Assab and that they communicated in Amharic and that most people speak Amharic there.

18. The judge having concluded that the appellant was not Eritrean gave minimal, if any, consideration to other aspects of the claim particularly that he suffered difficulties because of his Pentecostal Christian faith.
19. In the circumstances the case will need to be heard again.
20. The decision of the First-Tier Tribunal is set aside. No credibility findings stand.
21. In terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the case is remitted to the First-Tier Tribunal for a fresh decision.
22. The member(s) of the First-Tier Tribunal chosen to consider the case are not to include Judge Green.
23. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
Upper Tribunal Judge Conway

Date