



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14183/2016

THE IMMIGRATION ACTS

Heard at Newport
On 20 August 2018

Decision & Reasons Promulgated
On 4 September 2018

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ET
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu instructed by Duncan Lewis, Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant, who was born on 10 February 1993, claims to be a national of Eritrea and to be at risk on return as a Pentecostal Christian.
3. The appellant claims that she left Eritrea with her aunt when she was 4 years of age. They travelled to Sudan where the appellant lived for eighteen years. She claims that on 1 February 2015 she travelled to Libya where she stayed for seven months before travelling to the United Kingdom via Italy and France, arriving in the UK on 22 October 2015 when the appellant claimed asylum.
4. In a decision dated 8 December 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds. The Secretary of State did not accept that the appellant was an Eritrean national and so would be at risk on return to Eritrea either because of her Pentecostal faith or as a person who had illegally exited Eritrea.

The Appeal

5. The appellant appealed to the First-tier Tribunal. In a decision promulgated on 10 May 2017, Judge Frazer dismissed the appellant's appeal on all grounds. The judge also did not accept that the appellant was a national of Eritrea and so, consequently, the judge did not accept that the appellant was a refugee based upon Eritrean nationality.
6. The appellant sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal (Judge N J Bennett) on 7 September 2017. However, on 26 October 2017, the Upper Tribunal (UTJ Southern) granted the appellant permission to appeal.
7. On 17 November 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision.

Discussion

8. The appeal raises a single issue, namely whether the judge gave adequate and sufficient reasons for her adverse credibility finding and conclusion that the appellant had not established that she is an Eritrean national.
9. Mr Dieu, who represented the appellant took me to the judge's reasons at paras 25 - 31 of her determination.
10. At paragraphs 25 - 26, the judge dealt with the issue of the appellant's language. She spoke Arabic and Ahmaric but not Tigrinya. In his decision, the Secretary of State counted against the appellant that she did not speak Tigrinya despite claiming to be of Tigrinya ethnicity. The judge took a different view for the following reasons:

"25. The Appellant left Eritrea when she was four years old with her aunt. She then lived in Sudan for eighteen years. She said that her parents were divorced when

she was two and that her mother stayed in Eritrea. Her father was in prison. Her mother was in Eritrea now but she did not know where she lived. She had had no contact with her since she was two. She said that the people who lived in her neighbourhood in Sudan were deported from Ethiopia. Most people in the area in which she lived spoke Arabic and Ahmaric. Most of the children spoke Arabic and Ahmaric which is why she learnt that language. She explained in her interview that her aunt had lived in Ethiopia and that she spoke to her aunt in Ahmaric and Arabic.

26. I have had regard to the objective information in the Respondent's reasons for refusal letter. In particular, the extract from the UK Fact Finding Mission to Eritrea states that those who are under 35 and only speak Ahmaric are not from Eritrea at all. I have noted this carefully. However, if the Appellant had relocated to Sudan with her aunt, the primary languages in that area were Ahmaric and Arabic and the aunt could speak those languages, it is possible that the aunt might have wished to raise the Appellant speaking in languages that were going to be most useful to her. If the Appellant was claiming that she had been brought up in Eritrea I can see how the objective information would be more relevant to her circumstances. I do not consider that the fact that the Appellant only speaks Arabic and Ahmaric necessarily renders her account implausible. However the consistency of the Appellant's account gives me some cause for concern."
11. At paragraph 27, the judge turned to consider a potential inconsistency in the appellant's evidence as to whether she had ever returned to Eritrea since leaving aged 4. Her evidence both in her screening interview and asylum interview was that she had not returned to Eritrea. However, in a letter sent to the respondent by the appellant's (then) solicitors Crowley & Co, on 11 December 2015 following her screening interview, a number of clarifications of her interview were raised. One related to question 6, which appears to be a reference to a handwritten question in Part 7 of that interview, where she was asked "did you ever return to Eritrea?" and to which she replied "no I haven't". Correcting that, the appellant's representatives stated that the answer should be: "yes, I went to the city of Assab to look for my mother in 2005 and stayed for 9 months."
12. At paragraph 27, the judge took into account this inconsistency and the further inconsistency that the appellant claimed that her mother was in Eritrea but that she had also said that she had looked for her mother in Sudan. The judge said this:
- "27. In her screening interview the Appellant was asked whether she had ever returned to Eritrea and she replied that she had not. In her asylum interview at Q23 the Respondent asked her 'have you returned to Eritrea since you left at the age of four?' The record of her response is as follows: 'Yes. No didn't go to Eritrea (IO: Just to clarify have you ever returned to Eritrea at any point since you left there at the age of 4?) I went to search for my mum but I couldn't. I have never gone. (So you have never returned to Eritrea at any point, is that correct?) never.' In her evidence to the Tribunal she explained that in 2005 she went back to Kesala in Sudan to look for her mother. She confirmed that she had never gone back to Eritrea and that her solicitors had later told the Respondent in a letter that she had gone back to Assab to look for her mother, which was incorrect. I noted that in her interview she stated that her mother was in Eritrea which is not consistent with her assertion that she had tried to look for her mother in Sudan I have nothing from her solicitors to say that her instructions were incorrect or that the interpretation was ineffective. I found this aspect of the Appellant's account to be inconsistent."

13. At paragraph 28, the judge took into account, in assessing the appellant's credibility, a further inconsistency, as the judge saw it, in the appellant's evidence, namely at what point she claimed that, having attended a Pentecostal Church for the first time in 2009, she said that she had been healed of her illness. In her asylum interview she had said that it was in the "fourth month of 2014". In a further letter from the appellant's (then) solicitors Crowley & Co dated 26 May 2016 and following the appellant's asylum interview, her answers at interview (at questions 45 and 47) were corrected so that it was said that she claimed to have become healthy "in the fourth month of 2009".
14. At paragraph 28, the judge did not accept that there was a satisfactory explanation for the inconsistency in the appellant's evidence concerning the date on which she claimed that she had been healed. The judge said this:

"28. In her asylum interview the Appellant told the Respondent that she had previously suffered from a liver and kidney condition. A lady took her to church and she 'received a new life'. At Q43 when asked what happened to her illness after she attended church she said 'I was completely healed so I came completely free from that disease, so I am healthy now, I am happy and healthy'. At Q44 she said that the prayer at church healed her. At Q45 she said that she realised that she was healthy in the fourth month of 2014, that is, some five years later. It was then put to the Appellant at Q47 that she claimed that she first attended the church but did not realise that she was completely healed until 2014. She replied that that was correct. The Appellant's representatives then sent in a letter to the Respondent to say that what she had meant to say was that she had been healed in the fourth month of 2009. She was asked about this inconsistency under cross-examination. She explained that on the fourth months of 2009 she accepted Christianity but that in 2014 she had a certificate from a medical doctor to say that she was healed. She said that the explanation from her solicitors was caused by the difficulties that she had experienced with the interpreter. I had no corroborative evidence either from her solicitors or from anyone else that there were difficulties with the interpretation. It would be reasonable to assume that her solicitors, acting in accordance with their professional duty, would have verified her further instructions before sending them on to the Respondent. The inconsistency in her account arose internally within the account that she gave in interview and the further letter from her solicitors made her appear to backtrack on the account that she had first given. I find that this aspect of her account is also inconsistent."

15. As will become clear, it is the judge's reasoning in paras 27 and 28 which forms the basis of her adverse credibility finding and which Mr Dieu challenged before me.
16. Turning again to the judge's reasoning, at paragraph 29 she noted that the appellant had attended the Ethiopian Embassy - the respondent considered her to be of Ethiopian nationality - but had not obtained any real assistance in respect of that asserted nationality. The judge did not attach a great deal of weight to that visit for the following reasons:

"29. I am satisfied that the Appellant visited the Ethiopian Embassy and informed them that the Home Office was of the view that she was Ethiopian. In response they gave her a business card and told her to get the Home Office to call them. I have considered her actions in line with MA (Ethiopia) [2009] EWCA Civ 298. I do not attach a great deal of weight to the Appellant's visit to the Embassy. It is not

dissimilar to the actions of the applicant in MA who attended the embassy and made a representation that she was Eritrean.”

17. At paragraph 30, the judge then turned to the appellant’s claimed Pentecostal faith. It would appear that the judge did not accept the claimed faith but that, in any event, the issue did not arise given the judge’s conclusion that the appellant was not an Eritrean national. The judge said this:

“30. I have considered the evidence about the Appellant’s Pentecostal faith, I accept that she was able to provide a number of correct answers about the faith in her interview. I have considered the letters that she has provided about her attendance at church. However she has not called a pastor of her church to attend and vouch for her faith in accordance with Dorodian (01/TH/01537). I appreciate that she is unrepresented and I have taken this into account as she told the Tribunal that she was unaware that she had to call a pastor to attend to give evidence. She may well have an interest in the Pentecostal Faith and certainly her answers to questions in interview together with the letters that she provided from the pastors evidence this to some degree. However the guidance is clear and I do not seek to go behind it. In any event, given the finding I make below on nationality it falls away as an issue that I have to determine.”

18. Then, finally, at paragraph 31 the judge reached her conclusion that the appellant had failed to establish that she was a national of Eritrea for the following reasons:

“31. I found the Appellant’s overall credibility to be tainted by the inconsistencies in her account. In conclusion and for the reasons I have given above I do not find that the Appellant has established on the evidence to the lower standard of proof that she is a national of Eritrea. It therefore follows that her claims that she will be at risk of persecution on the grounds of her religion or imputed political opinion in Eritrea are not well-founded as Eritrea is not her country of origin. For that reason I also dismiss her claims under the ECHR.”

19. On behalf of the appellant, Mr Dieu submitted that the two issues relied upon, as giving rise to inconsistencies in the appellant’s evidence, in paras 27 and 28 did not go to the ‘core’ of her claim to be an Eritrean national. Mr Dieu submitted that they were tenuous points upon which to reach an adverse conclusion in respect of her nationality. He submitted that the discrepancies did not necessarily undermine her claim to be an Eritrean national. Her evidence could, for example, have been mistaken and she had given explanations. He submitted that the judge’s adverse credibility finding was inadequately reasoned and her decision should be set aside.
20. Mr Howells, on behalf of the Secretary of State, relying upon the Rule 24 response, accepted that the inconsistency in paragraph 28 (namely as to when she claimed she had become “healthy” after attending church) was not strictly relevant to her nationality. However, he submitted that the inconsistency in paragraph 27 identified by the judge was relevant to her nationality and, indeed, the judge identified two inconsistencies, not just as to whether she ever returned to Eritrea but also that she claimed that her mother was in Eritrea but that she had gone to look for her in Sudan. Mr Howells submitted that there was nothing from the appellant’s previous solicitors to verify that the corrections they had made in the two letters were not

done on the appellant's instruction and were wrong. He submitted that the judge gave adequate reasons and her decision should stand.

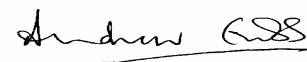
21. The challenge to the judge's reasons may be founded in two ways. First, a judge must give "intelligible" and "adequate" reason so as to enable the parties to understand why he or she has the decision or finding (see, e.g., South Bucks DC v Porter (No.2) [2004] UKHL 33). Secondly the challenge may be that reasons have been given but they disclose an error of law based upon a misdirection or misunderstanding of the evidence or cannot rationally support the judge's decision or finding.
22. In this case, it is clear from paras 27 and 28 of the judge's determination why she made her adverse credibility finding and rejected the appellant's claim to be an Eritrean national. Mr Dieu's challenge is, in effect, that those reasons cannot in law sustain her adverse finding. In other words, his challenge falls within the second of the two basis of a reasons challenge I have set out.
23. Here, the judge's reasons do not disclose any misdirection or misunderstanding of the evidence. In effect, therefore, the challenge must be that those reasons are insufficiently strong rationally to sustain her adverse finding in relation to the appellant's claimed nationality. That is a high hurdle for Mr Dieu to overcome. He must establish that no reasonable judge could have relied upon these reasons for reaching an adverse credibility finding.
24. I am not persuaded that the judge's reasoning was not properly open to her.
25. First, there was based upon the appellant's evidence at interview and what was said by her (then) solicitors in their letter of 11 December 2015, a clear inconsistency in her evidence as to whether she had ever returned to Eritrea since she left age 4. The representatives' correction could not be clearer: in answer to a question had she ever returned to Eritrea the answer was: "yes, I went to the city of Assab to look for my mother in 2005 and stayed for 9 months". If that correction was itself in error, her legal representatives did not draw that to the respondent's attention despite, in their letter of 26 May 2016, dealing with a number of clarifications in her evidence, albeit given at the later asylum interview. There was no evidence before the judge that her legal representatives had not made the clarification on the appellant's instructions. In those circumstances, the judge was entitled to conclude that there was a material inconsistency in the appellant's account which was relevant to whether she should be believed that she was an Eritrean national.
26. In addition, and there is nothing in the evidence to gainsay this, her own evidence at interview was inconsistent in that she claimed that her mother had stayed in Eritrea and remained there but nevertheless, despite that, she asserted in her interview that she had looked for her mother in Sudan. This was also a matter which the judge was properly entitled to take into account in assessing the appellant's credibility and, in particular, her claimed nationality.

27. Further, there was an inconsistency in her evidence concerning her claimed involvement with the Pentecostal Church in Sudan. Whilst, as Mr Howells acknowledged, this did not directly relate to her account to be an Eritrean national, it was, nevertheless, not an irrelevant matter in assessing her veracity overall. As the judge pointed out in paragraph 28, there was no supporting evidence that the record that she had said she was healed in the "fourth month of 2014" arose because of interpreter difficulties. Indeed, question 47 of her asylum interview specifically draws to her attention the apparent inconsistency in her previous two answers (to questions 45 and 46) that she claimed to have first attended the Pentecostal Church in 2009 but that she did not realise that she had been "completely healed until 2014". When that was put to her at question 47 of her asylum interview she responded "correct" thereby acknowledging the dates to be accurate.
28. Reading the judge's reasons as a whole between paras 25 and 30, I am not persuaded that the reasoning in paras 27 and 28 taken together could not rationally found the judge's adverse credibility finding. The judge's reasoning in paras 25 - 30 is balanced rejecting some of the respondent's arguments and, in effect, accepting others. The basis upon which the judge reached her adverse credibility finding is both "intelligible" and "adequate". It may well be, perhaps, that not every judge would have reached the conclusion reached by Judge Frazer. However, that is not sufficient to show that the reasoning is unsustainable in law. In my judgment, a reasonable judge properly directing herself was entitled to consider that the inconsistencies in the appellant's evidence identified in paras 27 and 28 undermine the credibility of the appellant such that the appellant had failed to establish the veracity of her claim to be an Eritrean national.

Decision

29. For these reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal did not involve the making of an error of law. The First-tier Tribunal's decision, therefore, stands.
30. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

28, August 2018