



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/02226/2020 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On the 15th June 2021

On the 28th June 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

WMM

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr I Hussain, instructed by Lei Dat & Baig Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who claims to be an Eritrean national with date of birth given as either 27.4.84 or 7.11.91, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 29.1.21 (Judge Holt), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 19.2.20, to refuse her claim for international protection.
2. Permission to appeal was granted by the First-tier Tribunal on 2.3.21 (Judge Keen), the judge considering the grounds arguable, stating “The judge arguably did not embark upon that global assessment which is the essence of an assessment of credibility”. The judge granting permission also considered that the judge: applied a higher standard of proof; imposed their own expectations of behaviour; took into account irrelevant considerations and speculation; and failed to take into account the appellant’s explanation.
3. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. The Tribunal has received the respondent’s Rule 24 reply, dated 26.3.21, which in essence submits that the grounds are no more than a disagreement with the decision.
4. I bear in mind the counsel of Lewison LJ in *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5, who at [114] explained the caution to be exercised by appellate courts in interfering with evaluative decisions of first instance judges, including that Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them.”
5. In MR (permission to appeal: Tribunal’s approach) Brazil [2015] UKUT 00029 (IAC) the Upper Tribunal held that, “A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge’s assessment of the evidence.”
6. Having carefully considered the submissions of Mr Hussain, I find that this is an instance akin to that described in VW (Sri Lanka) [2013] EWCA Civ 522 at [12], where LJ McCombe stated, “Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed

because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact."

7. Mr Hussain made three primary submissions of an error of law on the part of the First-tier Tribunal and four subsidiary submissions asserting material errors of fact.
8. The primary issue of fact in contention in the appeal was the appellant's claim to be of Eritrean nationality, inconsistent with her application for a visa to the USA using an Ethiopian passport. Mr Hussain argued that at [37] of the impugned decision the judge failed to give a full and proper consideration to the evidence of the witness SY, who claimed to have met the appellant and other of her family members in Eritrea. However, it is clear that at [16] of the decision the judge confirmed that she had carefully considered the evidence as a totality stating, "the fact that I have not referred in my determination specifically to any particular pieces of evidence does not mean that the evidence has not been considered in the way just described." It is clear from [37] of the decision that the judge considered the evidence of the witness in the context of the whole, which included the inconsistency highlighted at [37] that in interview the appellant stated that she had no close relatives outside of Eritrean, failing to mention her maternal uncle in Sudan who co-ordinated her protection claim and who put her in touch with the witness. In passing, I do not accept Mr Hussain's characterisation of the witness as 'independent.'
9. In summary, I am satisfied that the judge gave due consideration to the evidence of the witness, providing cogent reasoning for rejecting his account in the context of the issue as to whether the appellant is Eritrean or Ethiopian. No error of law is disclosed.
10. Mr Hussain also complained that at [24] the judge held it against the appellant that she failed to produce any documentary evidence to corroborate her claim to be Ethiopian. Whilst, in general terms, corroboration is not required in a protection claim which has to be proved only to the lower standard, it was relevant for the judge to note that the appellant had sought an adjournment to obtain such documentation. The judge was entitled to draw from this the inference that there was such documentation in existence and to express incredulity that in the 18 months since her nationality was put in issue by the respondent in the substantive asylum interview, she had not produced any such documentation. The judge pointed out that the supposed documents could, for example, have been photographed and sent electronically.
11. However, the point being made by Mr Hussain about seeking corroboration is entirely undermined by the judge making clear that no findings were based on

the absence of such documentation, the judge stating, "I simply note my surprise." In the following sentence the judge confirmed that no finding was made on this point. In the premises, there is no error of law in the judge's comments about the absence of documentation.

12. The third alleged material error of law is in relation to the obtaining and use of the Ethiopian passport. Mr Hussain submitted that the judge failed to consider all of the evidence, despite acknowledging at [35] that it might be possible to obtain such a passport by payment of a bribe, etc. However, reading paragraphs [26] through [35] it is clear that the judge made a careful and detailed consideration of the evidence. There were clearly identified and significant inconsistencies in the appellant's account. As Mr Tan submitted, she was evidently unable to maintain a consistent account about the Ethiopian passport. Amongst other elements considered by the judge was that the appellant was very evasive and unwilling to discuss the details at all, getting information from her being described as "like pulling teeth." It was only with reluctance that the appellant admitted that she and her husband had applied for visas for the USA using Ethiopian passports. I am satisfied that the conclusions of the judge that the appellant is in fact an Ethiopian national is fully reasoned and justified on the evidence. No error of law is disclosed.
13. Mr Hussain went on to submit that there were a number of material factual errors but in reality most of these amounted to 'scraping the bottom of the barrel' in seeking points with which to attempt to undermine the First-tier Tribunal decision. For example, the grounds and Mr Hussain focused on the judge's reference to elaboration in [22] of the decision. The ground is predicated on an interpretation of 'elaborate' being equated to embellish' and misunderstand the meaning of the word. Mr Hussain admitted that this was not his strongest point.
14. The only factual error of any substance is that at [23] the judge mistakenly stated that the appellant failed to mention in any of her interviews or her letter that when the authorities came looking for her husband they did so with a summons requiring him to attend their office by a certain date. As Mr Hussain pointed out and as Mr Tan accepted, the appellant had mentioned this in her response to Q102 of the substantive interview. I am satisfied that the judge made a mistake of fact, but I am not satisfied that this error was material to the outcome of the appeal in which the primary issue was whether the appellant was Eritrean as claimed or Ethiopian as the respondent maintained. Once that issue was resolved against the appellant with the judge concluding that the appellant is Ethiopian, the detail of alleged events in Eritrea is of marginal significance. I am not satisfied that even if the judge had accepted that the assertion of a summons had been mentioned earlier that this factor alone could have made any difference to the conclusion and the outcome of the appeal, given the cumulative effect of the other adverse findings.

15. The remaining points raised in the grounds are of such insignificance that even Mr Hussain did not pursue them in his oral submissions to me.
16. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal sufficient to require it to be set aside.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup

Date: 15.6.21

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup

Date: 15.6.21