



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

Appeal Number: AA/03545/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
On 24th August 2015**

**Decision & Reasons Promulgated
On 1st September 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SARA WORKU DEBELE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Bryce, Advocate, instructed by P G Farrell, Solicitors

For the Respondent: Ms S Aitken, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge McGrade, promulgated on 20th May 2015, dismissing her appeal against refusal of recognition as a refugee from Ethiopia.
2. The grounds criticise the judge's reasoning as follows. The judge founded upon the appellant not knowing the names of the couple who employed her in Abu Dhabi, overlooking the next question and answer of her interview (Q/A 104) where she explained that "sheikh" and "madam" were the terms by which she addressed them, not their names, which she proceeded to give. The appellant claimed to have used a passport in a false identity, changing only her first name and date of birth, not her

surname or place of birth. The judge thought that more would have been done to conceal identity, if that had been necessary. That was speculative and inadequately reasoned. The judge raised concern over the appellant's passport being issued in Ethiopia when the appellant claimed to have lived in Abu Dhabi, but there were no reasons why a passport might not be renewed by post or issued in another country, which would be a procedure similar to that adopted by the UK, and there was no evidence of consular or embassy procedures. Lastly, the judge made no allowance for the appellant having been subjected to trafficking and trauma.

3. Mr Bryce's skeleton argument for the appellant raises a new proposed ground, acknowledging that it comes late. On 3rd July 2014 the competent authority concluded that the appellant had been trafficked, but that those circumstances no longer existed and so the appellant did not qualify for leave to remain under the Anti-Trafficking Convention. The respondent's decision under appeal made nothing further of that aspect of the case. That is said to be an error in the light of the principles that the United Kingdom's obligations to a victim of trafficking do not cease once those circumstances no longer exist, or on a concession that there is no risk of re-trafficking. The skeleton argument proposes as its principal submission that the decision appealed against is not in accordance with the law, for want of engagement with the respondent's obligations to the appellant as a victim of trafficking, in particular under Article 14 of said Convention.
4. The skeleton argument goes on to develop the original grounds. As to the issue of a passport, a news item is produced to the effect that passports are issued at Addis Ababa. In oral submissions, Mr Bryce said that the judge failed to give credit to the appellant for the facts that her account was self-consistent and consistent with background information and an expert report, and that the original grounds were enough to call for a rehearing.
5. As to a the late variation of grounds of appeal, Mr Bryce said that such power is in the Tribunal Procedure (Upper Tribunal) Rules 2008 Rule 5(3) (c). He acknowledged that it would be open to the appellant to raise the matter by way of further representations to the respondent, but said there were advantages in terms of the appellant's immigration status through raising it in these proceedings.
6. Miss Aitken opposed amendment of the grounds. She said that the point was entirely novel in the proceedings, there was no good reason for not including it in the grounds in the First-tier Tribunal, and it came at the latest possible stage. The appellant had an alternative route for raising the matter with the Secretary of State which she should be expected to pursue.
7. As to the original grounds, although there was error about the appellant knowing the names of her employers in Abu Dhabi, that was not of great significance to the outcome. The other grounds were no more than disagreements. The judge's points about the appellant's dubious evidence

over her identity were well taken, and cumulatively there was nothing to undermine the decision.

8. I reserved my determination.
9. The judge made a mistake about the appellant not knowing the names of her employers in Abu Dhabi. However, this is not so material as to amount to an error of law requiring the determination to be set aside. The judge's points about the unsatisfactory evidence regarding the appellant's identity are well taken. His view on the implausibility of the appellant disguising her identity only to a limited extent was open to him, and sensible reasons are given. The point about the place of issue of the passport is also reasonable. The news item (which was not before the judge, although it might conceivably be deployed now to show error on an unanticipated issue) does not disclose that Ethiopian passports are issued only and always in Addis Ababa. The judge recognised that the appellant's account received some report from the expert (paragraph 31). He was entitled to find that outweighed by other concerns. Reading paragraphs 21 - 34 of the determination fairly and as a whole, the judge was entitled to reject the appellant's account of fleeing Ethiopia due to her involvement in the OLF, for the reasons he gave.
10. That leaves the further proposed ground.
11. The Tribunal Procedure (Upper Tribunal) Rules 2008 do not include express power to permit amendment of grounds of appeal, but it is usually considered to be available either as part of the general case management powers under rule 5(1) or under the specific power cited by Mr Bryce, which is to "permit or require a party to amend a document". That is apt to include a ground of appeal; probably a written pleading is the kind of document for which the rule is intended.
12. The later an amendment is proposed, the less likely it is to be allowed. There is no reason why the point could not have been taken immediately in response to the respondent's decision.
13. The ground is not one intended to sharpen or develop the case. Its radical difference from anything argued in the First-tier Tribunal is also against its introduction now.
14. I think there was at least an argument open to the appellant under the Anti-Trafficking Convention. Mr Bryce referred to authority that the absence of the circumstances under which she was trafficked, and the absence of the risk of re-trafficking, do not exhaust the matter. However, he did not argue that the point is so obvious that the First-tier Tribunal should have taken it on its own initiative. At highest, I would find it difficult to construe this into an error of law by the First-tier Tribunal.
15. The existence of another remedy is also relevant. I think that to justify such a late departure would require a point of obvious strength, once

identified, *and* no other way to pursue it. The appellant has another route. Even if she does not find it equally attractive, it enables her to put the merits to the test.

16. I decline to permit variation of the grounds of appeal.
17. The determination of the First-tier Tribunal shall stand
18. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman

27 August 2015