



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

Appeal Number: AA/10235/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2015**

**Decision and Reasons
Promulgated
On 25 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

DAH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith, counsel instructed by Lambeth Law Centre
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of FTTJ A Khawar, heard on 19 February 2015, in which he dismissed the appellant's appeal against a decision to refuse to grant her asylum.

Background

2. The appellant arrived in the United Kingdom on 7 June 2012. Her asylum claim was refused on 1 March 2013, however she was granted Discretionary Leave to Remain until 1 July 2013 owing to

being an unaccompanied minor. She sought further leave to remain on 21 June 2013 and the refusal of that application is the subject of this appeal.

3. The basis of the appellant's asylum claim is that she is an Eritrean national and a Pentecostal Christian. The appellant states that she was born in Eritrea but went to live in Ethiopia with her parents about a year after her birth. The appellant returned to Eritrea in the year 2000 but left around two years later to reside in Egypt. She returned to Eritrea between 2008 and 2010 but encountered persecution, including detention, owing to her religion. Thereafter she left the country.
4. The Secretary of State refused the appellant's application for further leave with reference to a SPRAKAB report, which concluded that the appellant spoke Amharic to a native level. The respondent considered that the appellant was an Ethiopian national. Reference was also made to the reasons provided for refusing the appellant's asylum claim, in which her claim to be a Pentecostal Christian was rejected. Consideration was also given to the appellant's private life in the United Kingdom, both within and outside the Immigration Rules, however her removal was considered appropriate.
5. During the course of the hearing before the First-tier Tribunal, only the appellant gave evidence. The FTTJ rejected the appellant's claimed nationality owing to the SPRAKAB report as well as on credibility grounds. Furthermore, the appellant's claimed faith was not accepted, also on credibility grounds. The appeal also failed under Article 8 ECHR.

Error of law

6. Permission to appeal was sought on the basis that, in essence, it was arguable that the FTTJ had no regard to material matters in relation to the appellant's nationality and did not consider the limitations of the SPRAKAB report. The FTTJ made no findings regarding the risk to the appellant as a perceived political opponent of the Eritrean government. Upper Tribunal Judge Eshun, in granting permission, considered that the grounds raised arguable errors.
7. The Secretary of State's response of 1 September 2015 indicated that the respondent opposed the application for permission to appeal as it was considered that the FTTJ appropriately directed himself; that the grounds were "*almost*" the definition of disagreement and that the FTTJ took a rounded view of the case.

The hearing

8. Mr Whitwell submitted the judgment in RM (Sierra Leone) v SSHD [2015] EWCA Civ 541. No further reference was made to that decision, in view of Ms Smith's concession that the SPRAKAB report was not being disputed.
9. Ms Smith developed the grounds of application and placed particular emphasis on the FTTJ's emphasis on the fact that Amharic is the appellant's main language, without having regard to the appellant's particular background. In terms of the respondent's SPRAKAB "order form," I was asked to note that important aspects of the appellant's history were absent from the information given to SPRAKAB. Ms Smith also took me to the background material before the FTTJ in relation to the town of Assab in Eritrea, where the appellant has always claimed to live, when she was in Eritrea.
10. It was also argued, on the appellant's behalf, that the FTTJ made assumptions regarding language which failed to take into account the facts of the appellant's case, as presented. Finally, Ms Smith argued that the FTTJ's negative findings regarding the appellant's attendance at an Ethiopian church bordered on the irrational.
11. Mr Whitwell reiterated the respondent's view that the grounds were no more than disagreement with the FTTJ's conclusions. He disputed that the FTTJ considered language to be determinative; arguing that it was merely a weighty factor. In this he referred me to [24] to [28] of the decision and reasons. Mr Whitwell argued that the FTTJ had considered other evidence submitted by the appellant from the church and the Eritrean community but had concluded that this was not sufficient to alter his findings. He took me to [34] of the decision, where the FTTJ had remarked on the absence of evidence from the Ethiopian Embassy to indicate that the appellant was not Ethiopian. Contrary to what was argued on behalf of the appellant, Mr Whitwell took me to parts of the FTTJ's decision where he had noted at [25], that the appellant did not live in Eritrea for large parts of her life and at [27], she had been cared for by an Ethiopian nanny in Egypt. With regard to the town of Assab, Mr Whitwell argued that Amharic was a secondary language and that there had been no expert evidence before the FTTJ. Finally, the FTTJ had noted at [35] that the appellant did not speak Tigrinya and consequently his conclusion that the appellant was Ethiopian was open to him on the evidence.
12. In reply, Ms Smith maintained that the issue of language was highly influential. From the outset, the appellant had said that Amharic was her first language and that she understood some Tigrinya and Arabic. With regard to the FTTJ's findings on religion at [37], she argued that he had already decided the nationality

issue by this point. The appellant had only lived in Eritrea, in Assab, for three short periods of her young life. The SPRAKAB report did not set out the questions posed and the appellant's replies. Whereas in her asylum interview, the appellant had been questioned extensively on Eritrea and Assab and there had been on criticisms of her responses. The FTTJ had failed to take into account the appellant's diverse background.

Decision on Error of Law

13. The core issue in the appellant's case is that of nationality. If she is an Eritrean national, it is not in dispute that she has an arguable case to be considered a refugee. Notwithstanding Mr Whitwell's arguments, the FTTJ took the appellant's linguistic ability to be determinative. Indeed at [35] of the decision and reasons he states as follows;

"I conclude on the evidence before me that the Appellant is in fact Ethiopian and not Eritrean in view of her contradictory evidence and particularly in view of the fact that she speaks Amharic fluently and does not speak Tigrinya or Arabic."

14. The appellant has never claimed to speak Tigrinya and has always maintained that her first language is Amharic. She has provided extensive reasons for this, given her claim to be Eritrean. Firstly, she states that she left Eritrea at a very young age and returned there only for short periods of time interspersed by many years living elsewhere. Secondly, she says that her mother died when she was very young and that she was cared for by an Amharic-speaking nanny in Egypt, while her father worked. Thirdly, during the years when the appellant claimed to live in Eritrea, she states she resided in Assab, a town where the objective evidence before the FTTJ, contained at pages B49-50 of the appellant's bundle describes Amharic as the "*lingua franca*." The FTTJ failed to take any of these factors into consideration in concluding that the appellant's inability to speak Tigrinya was fatal to her claim to be an Eritrean national.
15. The SPRAKAB report concludes that, following analysis, the appellant was considered to speak Amharic at "*native*" level. However, the information provided to SPRAKAB by the respondent prior to the analysis taking place, failed to mention relevant aspects of the appellant's account and background. In fact, the same matters which were not considered by the FTTJ.
16. The respondent's SPRAKAB order form did not recount that the appellant's Eritrean mother died when the appellant was aged 3; does not say that the appellant was deported to Assab; that she went to live in 2002 in Egypt; that she had an Ethiopian nanny or that that she returned to Assab in 2008 until 2010. The FTTJ ought to have considered the limited information provided to

SPRAKAB and therefore the limitations of the analysis in determining the amount of weight to attach to the said report.

17. In these circumstances I am satisfied that there are errors of law such that the decision ought to be set aside to be remade. None of the findings of the FTTJ are to stand.
18. I considered whether this appeal should be remade in the Upper Tribunal on a future date, there being no Amharic interpreter booked; however in view of fact that the appellant has changed representatives since the First-tier hearing, that expert evidence is intended to be adduced as well as the appellant's pregnancy, I consider it appropriate to remit the matter to the First-tier Tribunal for a de novo hearing.
19. Further directions are set out below.
20. No anonymity direction was made by the FTTJ, however I consider it appropriate to make the following direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo by any First-tier Tribunal Judge except FTTJ A Khawwar.
- The appeal should be listed for a hearing at Hatton Cross.
- An interpreter in the Amharic language is required.
- Time estimate is 3 hours.

Signed

Date: 22 November 2015

Deputy Upper Tribunal Judge Kamara