



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

Appeal Number: AA/00651/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11 February 2016 and 28 April
2016**

**Decision & Reasons Promulgated
On 3 June 2016**

Before

**Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)**

Between

**LK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Nicholson, Counsel (11 February 2016)
Ms J Smeaton, Counsel (28 April 2016)

For the Respondent: Mr C Avery, Home Office Presenting Officer (11 February 2016)
Mr E Tufan, Home Office Presenting Officer (28 April 2016)

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Walker) issued on 9 September 2015 dismissing her appeal against the respondent's decision refusing leave to enter and proposing to give directions for her removal to Eritrea or Ethiopia following the refusal of her claim for asylum.

Background

2. The appellant arrived in the UK on 13 December 2013. She claimed that she had left Eritrea and travelled to Sudan on 15 November 2013. From there she travelled through an intermediate country before arriving in the UK. She claimed asylum on arrival and was subsequently interviewed. Her application was refused for the reasons set out in the decision letter dated 6 January 2014. The respondent was not satisfied that the appellant was an Eritrean citizen and in reaching this decision she took into account a linguistic analysis report prepared by Sprakab.
3. The appellant appealed against this decision and her appeal was heard on 3 March 2014 and dismissed. The judge took into account the Sprakab report and found that the appellant had failed to prove that it was reasonably likely that she was an Eritrean citizen. She was granted permission to appeal and at a hearing before UTJ Grubb on 10 July 2014 it was conceded that the judge may have misunderstood the Sprakab report or at least not given sufficient consideration to it to explain and justify his conclusion that it established that the appellant was an Ethiopian rather than an Eritrean national.
4. In his decision UTJ Grubb said at [13]:

“In my view Mr Richards’ concession is entirely properly made in this case. Putting it at its lowest the Sprakab report is unclear as to precisely what is the appellant’s nationality. Putting it at its highest it is mostly consistent with the appellant’s claim to have been an Eritrean who lived amongst Ethiopians as she claimed to do between the ages of 2 and 9 when one might assume her linguistic abilities and skills developed before being deported back to [Eritrea]. It is clear to me that the judge may have over-read or misread the report so as in paragraph 65 of his determination to conclude, on the basis of the Sprakab report, that the appellant was likely to be a national of Ethiopia and not a national of Eritrea.”
5. Accordingly the appeal was allowed and remitted to the First-tier Tribunal for a rehearing by a different judge. That hearing took place on 7 July 2015 before Judge Walker. This was a very comprehensive determination. However, at [30] the judge referred to the Sprakab report saying that it concluded that the appellant was highly likely to be an Ethiopian among Eritreans and was unlikely to be an Eritrean. The judge considered the jurisprudence about how an assessment of a Sprakab report should be carried out: [57]-[58]. He then said at [59]:

“The Sprakab report dated 03.1.2014 concludes to a high degree of certainty that the appellant is highly likely to be an Ethiopian among Eritreans and is unlikely to be an Eritrean ...”

The Grounds of Appeal and Submissions

6. Unsurprisingly perhaps, the first ground in the appellant's notice of appeal is a challenge to the conclusions the judge drew from the Sprakab report. The grounds argue that the judge should have concluded that it in fact provided strong support for the appellant's claimed nationality as it found that the appellant's linguistic background was assessed to be "Ethiopia among Eritreans" whereas it found that the speaker's claimed linguistic background as "Eritrea" was unlikely. In the Summary of Findings it is concluded that the appellant has mastered Tigrinya on a native speaker level and that her language used was congruent with the language used among Eritreans in Ethiopia. Further grounds argue that the judge failed to provide adequate reasons for his decision and also challenge his findings in relation to the appellant's claimed membership of a Pentecostal church.
7. Mr Nicholson adopted his grounds whereas Mr Avery sought to argue that if the judge had erred as the first ground suggested, the error was not material to the outcome of the appeal in the light of the judge's other findings on credibility.

Assessment of Whether there is an Error of Law

8. I am satisfied that the judge erred in law. He fell into the same error identified by UTJ Grubb when setting aside the previous First-tier Tribunal Judge's decision. The judge misread the linguistic analysis report by drawing from the findings on linguistic background that the Sprakab report concluded to a high degree of certainty that the appellant was likely to be an Ethiopian among Eritreans and unlikely to be Eritrean. In fact the appellant's linguistic background was assessed to be "Ethiopia among Eritreans" whereas she had described it as "Eritrea." It is correct that the report said that the appellant displayed very limited knowledge of her stated area of origin. This was evidence properly to be taken into account but, even taken with the other credibility factors identified by the judge, this does not satisfy me that the error of approach to the conclusions to be drawn from the Sprakab report can be regarded as either immaterial to or not capable of affecting the outcome of the appeal.
9. Accordingly, I am satisfied that the proper course is to set aside the decision. It is unfortunate that this appeal has already been heard twice by the First-tier Tribunal. I am satisfied that the proper course is for it to be retained in and for the decision to be re-made by the Upper Tribunal.
10. The appellant submitted for the resumed hearing on 28 April 2016 a bundle of documents indexed and paginated 1-158. I also have the documents which were relied on by both the appellant and the respondent before the First-tier Tribunal.

The Evidence of the Appellant

11. The appellant gave oral evidence through a Tigrinya interpreter. She adopted her witness statement of 6 April 2016 (A2-8) subject to one minor

correction in paragraph 2. The chronology of events set out in that statement can briefly be summarised as follows. The appellant was born on [] 1990 in Eritrea in Dekemhara City. She is a national of Eritrea. Both her parents were born in Eritrea. She claimed to be a Pentecostal Christian, the religion of both her parents. In 1992 she moved with her mother and father to Addis Ababa in Ethiopia as her father decided to open his own garage there. In 1995 her parents separated and her mother returned to Eritrea. From 1996 to 2000 she attended an elementary school in Ethiopia but could not continue with her education due to the war between Eritrea and Ethiopia. She and her father were later deported from Ethiopia in February 2000 because of their nationality. After they crossed the border her father was required to show his identity to prove that he was an Eritrean national. Based on that assessment and his ties with the brother who resided in Assab, he was issued with a resettlement and household grant and they were collected by the appellant's paternal uncle and they settled in Assab.

12. In December 2002 her father secured a job in Khartoum as a mechanic in a garage. He obtained an Eritrean passport which had her picture in it and this was used to travel to Sudan. As a child she was not allowed to have her own passport. They lived in Sudan for about six years with her father's sister. In 2006 her father was injured and he had serious back problems and his health deteriorated. They had to return to Eritrea at the end of September 2008 as they were no longer eligible to stay because of her father's illness.
13. In Sudan, when her father had time, he would take her to church and sometimes his friends would come over and they would have prayer sessions. On returning to Eritrea they would pray at least once a week as a group but on most days she and her father would pray together in their home. On 27 September 2009 she was baptised in Assab at their house. This was because the Pentecostal religion had been banned in May 2002 and the church was closed. In 2009 she was introduced to her husband and told that he was a Pentecostal Christian and that the family wanted her to marry him. The relationship developed and on 17 January 2010 she duly married. The local administration sent conscription letters saying that the appellant must attend Sawa but her uncle explained that she was married and as she spent all her time looking after her father because of his illness, she was exempt from national service.
14. On 10 November 2013 there was a religious session at one of her friend's house where there were six worshippers. She and her friend went to use the bathroom facilities. Her friend then saw Eritrean soldiers raiding the house. They were very frightened and decided to run before the soldiers saw them. They went to her friend's aunt's house and hid. She asked the aunt to inform her uncle what had happened and he came to the house and told her that he had been approached by Eritrean soldiers asking about her whereabouts. He said that her life was in danger and he organised an agent to take her to Sudan on 15 November 2013 as her aunt was there. She arrived in Khartoum on 18 November 2013. She was

provided with a passport in a false name. She boarded a plane which landed in an unknown destination for two or three hours transit and was then placed on a plane to the UK arriving on 8 December 2013. The appellant was stopped by Immigration Officers, provided with a translator and screened. She claimed asylum at the airport.

15. In her statement the appellant says that she has been a Pentecostal Christian since birth and that religion has been banned in Eritrea since May 2002. Pentecostal followers have been arrested and detained and all their churches have been closed down. She maintained that she had a well-founded fear of persecution for this reason and she also feared that she would be arrested because she would be perceived as a draft evader. She had not done military service and she had also left the country illegally. She had lived in the UK since December 2013. After she was dispersed to Cardiff she had attended a church there from December 2013 to January 2014 and after being relocated to Bristol had attended church there. She had provided a copy of the identification cards of both her father and her uncle. She spoke Tigrinya and did not understand why the respondent disputed the fact that she was Eritrean.
16. In cross-examination she said that her cousin who was due to give oral evidence was her father's sister's son. He had one sister and five brothers and was an Orthodox Christian. She was referred to a DHL envelope which had been sent to her from Eritrea saying that it contained a letter personal to her and the identity cards for her father and uncle. She accepted that the envelope from DHL had come from Asmara rather than Assab. She explained that there was only a very small Post Office in Assab and no facilities for sending post by DHL. She was not aware of how the envelope had gone from Assab to Asmara but had been told that it would be sent from Asmara. She did not have an Eritrean identity card as it had been lost and for this reason she had produced the identity cards of her father and uncle. She had gone to school in Ethiopia but not in Eritrea. She had not worked in Eritrea. In Ethiopia she had lived in an area near Addis Ababa where they mainly spoke Amharic.
17. Her main reason for leaving Eritrea was because she was deprived of her right to worship. Her father was still there but he had been forced to renounce his faith as he did not have the right to worship or pray. He had to be very secretive and hide from the government. She was asked about the events of 10 November 2013 and said that she had been in the bathroom when the house was raided. Her friend had been able to look through a hole in one of the walls to see the soldiers. She drew a rough plan of the house. She accepted that the worship had finished and that she had gone with her friend to the bathroom. She had told her that she had seen the soldiers. There was a small corridor and she had been able to see them through a hole in the wall. The walls were made of a mix of wood and brick. She had not known what had happened to her friend after they had been to her aunt's house.

18. She confirmed that she attended a Pentecostal Church in the UK referring to the letters written by the church leaders. She was only able to identify them as Pastor Peter and Pastor Simon. She could not remember their surnames as she called them by their first names. They had not attended the hearing as they had busy schedules but they had written in her support. She referred to the photographs at A37-39 showing her taking part in a conference for older members of the congregation who had come from Eritrea.
19. In re-examination she explained that she had not been able to go to school in Eritrea between 2000 and 2002 because there was a shortage of school places. In answer to questions I asked, she said that she had lost contact with her husband. She last saw him in 2011 and feared that he may have been detained by the authorities when in worship. She had not heard from him since.

The Evidence of MB

20. The witness statement of MB appears at A9-10. He is an Eritrean national from the Tigrinya ethnic group and an Orthodox Christian. In his witness statement he says that the appellant is his first cousin, his mother and her father being siblings. He fled Eritrea in November 2008 to avoid persecution arriving in the UK in June 2011. He was later granted asylum. In 2000 when the appellant and her father had been deported from Ethiopia to Eritrea his mother decided to visit them in Assab but he was too young to go and he stayed at home with his father. In 2002 his mother had told him that the appellant and her father had travelled to Sudan.
21. In September 2008 he had a call from his mother telling him that her brother had returned to Assab because he was ill. At that stage he was carrying out his military service. He obtained leave for three days and travelled to Assab to visit his sick uncle. That was the first time he had met the appellant. Later, he learned from his mother in May 2014 that she had travelled to Assab to visit her brother who told her that the appellant had left Eritrea and travelled to the UK. His mother gave him the appellant's number and he had contacted and met her in London. He confirmed that the appellant was an Eritrean national.
22. In cross-examination he said that he had one sister and five brothers. He had met the appellant once in Eritrea. He did not know that she was coming to the UK but had learnt this from his mother and she gave him her number. The appellant's father was still in Eritrea. In answer to questions from me he said that his brothers were still in Eritrea. He had left because of the harsh conditions in the army and had been able to take an opportunity to escape from that situation.

The Sprakab Report

23. The referral for a Sprakab Report at C1-2 of the respondent's documents identifies the appellant as coming from Asmara with a claimed nationality of Eritrean. The reason for referral is given as, "speaks Tigrinya as mother tongue but requested Amharic." This appears to reflect the fact that at the screening interview the appellant spoke in Tigrinya but requested an Amharic interpreter for the full asylum interview. The Sprakab Report is dated 7 January 2014 and box 1.1 sets out the assessment of the speaker's linguistic background as "Ethiopia, among Eritreans," a decision reached with a high degree of certainty. Box 1.2 sets out the likelihood assessment of the speaker's stated linguistic background identified as Eritrea. This is assessed to the following degree of likelihood; "unlikely." Box 1.3, the summary of findings, sets out the brief summary of where the appellant has lived. This is consistent with her witness statements and her oral evidence. It then says:

"The speaker has mastered Tigrinya on a native speaker level. Her language use was not congruent with that of a native speaker in Eritrea. Her language use was congruent with the language use among Eritreans in Ethiopia. The speaker's stated linguistic background is assessed to be unlikely."

24. Section 2 of the report records that the appellant speaks Tigrinya at native level. Her language displayed phonological features not congruent with Tigrinya as spoken in Eritrea but typical of Tigrinya speakers in Ethiopia and disclosed grammatical features and lexical features congruent with Tigrinya as spoken among Eritreans in Ethiopia. Section 3 deals with knowledge assessment and says that the speaker displayed a very limited knowledge, naming Assab Keber and Campo Sudan as districts of Assab but, apart from this, she was not able to give detailed knowledge of Eritrea.

Further Evidence on Nationality

25. The appellant also relies on a letter from the Eritrean community in Lambeth dated 29 June 2015 which sets out the methodology the community use to establish a claim to be Eritrean. This included using the knowledge of elders in the community who are indigenous members of particular towns and communities and ascertaining nationality by seeing if a person speaks one of the Eritrean languages with an Eritrean accent and dialect. The letter says that the community has established and confirmed via all this methodology and concluded that the appellant is an Eritrean national and is a true witness of what she claims to be.
26. There is also evidence at A29 and 30 of an application made by the appellant for a passport from the Ethiopian Embassy which has been endorsed with the following:

"The applicant has not attached any supportive documents with her application for an Ethiopian passport. Therefore there is no valid reason for the embassy to issue her with an Ethiopian passport."

Background Evidence

27. The most recent background evidence is set out in the Human Rights Watch January 2016 Report at A47-52 and the Amnesty International annual report 2015 2016 at A53-56. These confirm the very grave human rights situation in Eritrea as set out in previous country guidance determinations. The Human Rights Watch Report confirms that the government persecutes citizens who practise religions other than the four recognised, Sunni Islam, Eritrean Orthodox, Roman Catholic and Lutheran. Prayer meetings of unrecognised religions are disrupted and participants are arrested. The United Nations report of 4 June 2015 A83-110 confirms that the religious gatherings of non-authorized denominations are prohibited, religious materials confiscated, adherents arbitrarily arrested, ill-treated or subjected to torture during their detention and prisoners coerced to recant their faith. Many religious followers have been killed or have disappeared.
28. There is a further article, "In between nations Ethiopian-born Eritreans, Liminality and war", prepared by Jennifer Riggan of Arcadia University exploring the problems faced by Eritreans born in Ethiopia following the creation of rigid borders between the two countries following Eritrea's war of independence. This confirms that many of those expelled from Ethiopia found their way to Assab which for historical reasons had a much more Ethiopian feel to it and where Amharic was used as a lingua franca. However, speaking Amharic in public was subject to official disapproval. The vestiges of what was regarded as Ethiopian identity were seen as undesirable. The Eritrean authorities introduced policies to incorporate those who had come from Ethiopia into the Eritrean national body.

Submissions

29. Mr Tufan submitted that the appellant had failed to show that she was an Eritrean as claimed. There was very limited documentary evidence, the appellant relying on photocopies of identity cards of people claiming to be her father and uncle. The evidence from the cousin was not unbiased and the likelihood was that he was simply attempting to help her. His very short statement did not take matters much further. There were concerns about the DHL envelope sent from Asmara. There was no adequate explanation why the appellant's father who was ill would have sent this from Asmara or why documents could not have been simply sent by post. The appellant had been to the Ethiopian Embassy but as she had produced no documents to support an assertion that she was Ethiopian, it was not surprising that her application had been refused. The Sprakab Report in the circumstances of this case could be disregarded as it did not really help either way. So far as the appellant's faith was concerned the fact remained that her father who was said to be Pentecostal still lived in Eritrea and was able to practise his religion at home. The account given by the appellant of the raid on the friend's house was simply not credible. She had given inadequate details about the layout of the property and none of the details given about viewing soldiers through a hole in the wall

had any ring of truth. The appellant had produced documents from pastors at her church but it was not clear why they had not attended the hearing or why the appellant could not remember their surnames. In summary he submitted that the appellant had failed to establish her nationality or that she was a Pentecostal Christian.

30. Ms Smeaton submitted that the appellant's claim to be Eritrean was supported by the documentary evidence she had produced and the oral evidence of her cousin. She had produced identity cards from her uncle and father. These had now been translated and were at least prima facie evidence that they were Eritrean. The appellant had been told that they would be sent by DHL but she was unable to explain how the documents got to Assab but that should not, without more, affect the credibility of her evidence.
31. Her nationality was supported by the Sprakab Report. Her linguistic background was described as Ethiopia among Eritreans and she had been in Ethiopia from 1992 to 2000. Her schooling had been in Amharic but she had spoken Tigrinya at home. This was consistent with a linguistic background of Ethiopia amongst Eritreans. Such questions as she was asked about Eritrea at interview had been answered and were not questioned. Matters originally relied on by the respondent in the decision letter were now accepted as relating to another applicant. So far as the appellant's religion was concerned, no issue had been taken in the decision letter that she would not be at risk as a Pentecostal Christian. Her evidence on this issue was supported by her attendance at Pentecostal Churches in this country and the letters from the pastors. Her evidence about the raid on her friend's home in November 2013 was consistent with the background evidence. She submitted that the appellant had shown to the lower standard of proof that she was Eritrean and a Pentecostal Christian and for that reason she was entitled to asylum.

Assessment of the Issues

32. The first issue I must assess is whether the appellant is Eritrean as she claims. She must establish this to the lower standard of proof, a reasonable degree of likelihood, that this is the case. In the decision letter when assessing credibility the respondent drew an adverse inference from the fact that the appellant was asked to name the national days of Eritrea and of the 23 national holidays she named four, two of which were incorrect. She also could not describe the Eritrean identity card other than say it was blue and yellow: paragraph 7. However, it is now accepted that this information did not relate to the appellant and was included in error as was the claim at paragraph 16 that she had not provided a reasonable explanation about her failure to apply for asylum in France. The questions the appellant was asked at interview about Assab at Q167 and 168 to name four hotels and areas where they were in Assab were answered by her and there has been no challenge to those answers.

33. The appellant has relied on identity cards obtained from her father and uncle at the hearing before the First-tier Tribunal. No translations were provided at that stage but this omission has now been rectified. The card from the appellant's father sets out his name, his date of birth as 1950 and place of birth as Sesah. He gives his occupation as driver. The date of issue is given as Addis Ababa 28 November 1992. On her uncle's card his date of birth is given as 1945 in Sesah. He is described as a garage owner and the place and date of issue is Addis Ababa 29 November 1992. This could provide confirmation of the appellant's evidence in that the place of birth of her father as such is given as Sesah and in her statement she refers to being born in Dekemhara City, a specific area called Sesah. Her uncle is described as a garage owner and it is the appellant's account that her father went to work to open a garage in Addis Ababa, and his cards were issued in Addis Ababa in November 1992.
34. The appellant's evidence is confirmed by her cousin, assuming that he is who he claims to be. His statement is consistent with hers. He only claims to have met her once in Eritrea and he was able to resume contact when he heard from his mother that she had come to the UK.
35. The appellant's nationality is supported by the letter from the Eritrean community in Lambeth but this evidence is of very limited probative value as it fails to give any reasons why it is considered that the appellant is an Eritrean national. The evidence from the Ethiopian Embassy also takes the matter no further as it is hardly surprising that she was not accepted as an Ethiopian national as she produced no documents to support her claim and in any event it is on her account a claim she does not seek to make.
36. The Sprakab Report formed the primary reason in the respondent's decision for the conclusion that the appellant was not Eritrean. Mr Tufan has submitted that this report does not take the matter any further. However, I am satisfied that this report is, if anything, consistent with the appellant's evidence rather than inconsistent. Her linguistic background is assessed to be Ethiopia among Eritreans. It is to be noted that the assessment is not the appellant's nationality as such but of her linguistic background. On her account the appellant lived near Addis Ababa between 1992 and 2000 and she went to school in Ethiopia where she was taught in Amharic. Nonetheless, on her account she was living amongst Eritreans and was speaking Tigrinya. The report concedes that she mastered Tigrinya on a native speaker level. However, at the time when she was learning both languages, from the age of 2 to 10 her linguistic background could properly be described as "Ethiopia among Eritreans" and not as "Eritrea."
37. It is not clear why the speaker's stated linguistic background from 1.2 is said to be Eritrea although this may have been inferred from the details on the referral describing her as from Asmara and speaking Tigrinya as a mother tongue. In any event the report says that it is unlikely that her linguistic background is Eritrea, which in any event would not be

consistent with the appellant's own evidence. There are further indications that her language use is congruent with the language use amongst Eritreans in Ethiopia, the report setting out that she displayed phonological, grammatical and lexical features congruent with Tigrinya as spoken amongst Eritreans in Ethiopia. In summary, the Sprakab Report tends to support what the appellant says about her linguistic background.

38. There are concerns about the credibility of the appellant's account of events and in particular her account of the incident in November 2013 leading her to leave Eritrea for Sudan. Her account on its face is not without its difficulties and in particular her evidence that her friend with whom she had gone to the bathroom had been able to see from a corridor and through a hole in the wall that Eritrean soldiers had raided the house. Despite this both she and her friend were able to escape and make their way to her friend's aunt's house. Her uncle was then able to arrange for an agent to take her to Sudan on 15 November 2013.
39. However, I must set against this the fact that the appellant's account has been internally consistent in that she has given a similar account when interviewed and when giving oral evidence. It is supported by her cousin. It is also externally consistent with the background evidence about when Eritrean nationals were deported from Ethiopia, the fact that many ethnic Eritreans from Ethiopia moved to Assad where both Amharic and Tigrinya were used and, so far as the incident of the authorities raiding her friend's home, that is consistent with the behaviour of the Eritrean authorities towards unauthorised religious gatherings. Therefore, whilst there are doubts about some aspects of the appellant's evidence, looking at the evidence as a whole and in particular the Sprakab Report, I am satisfied that she does establish to the lower standard of proof that she is Eritrean and not Ethiopian.
40. I must now consider whether she also establishes to the same standard of proof that she is a Pentecostal Christian and would be at risk on return. On this issue it is argued that her evidence is undermined by the fact that the pastors from her church have not attended but have simply written letters. On the other hand the appellant has been consistent in her assertion that she is a Pentecostal Christian. The letters taken with the photographs she has produced, assessed in the light of my findings on her general credibility, satisfy me at least to the lower standard of proof that she is indeed a Pentecostal Christian as she claims.
41. It is correct as Ms Smeaton points out that the decision letter does not expressly take issue with the fact that Pentecostal Christians would be at risk on return to Eritrea but in any event the background evidence makes it clear that Pentecostal Christians would be at real risk of persecution on return to Eritrea. Her fear arises from the state authorities and in these circumstances no question of internal relocation arises. It was further argued that if the appellant was not at risk as a Pentecostal Christian she would be at risk on return as someone who had made an illegal exit from Eritrea. If the outcome of the appeal had turned on that point I would

have awaited the decision in a pending country guidance case dealing with that issue. However, as the appellant succeeds on the grounds of religion, I can properly determine this appeal without awaiting the outcome of that hearing.

Decision

42. The First-tier Tribunal erred in law and the decision has been set aside. I re-make the decision by allowing the appeal on asylum grounds. An anonymity order was made by the First-tier Tribunal. No application has been made to vary or discharge that order which therefore remains in force.

Signed H J E Latter
Deputy Upper Tribunal Judge Latter

Date: 1 June 2016