



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00038/2017

THE IMMIGRATION ACTS

Heard at Glasgow
on 19 October 2017

Decision and Reasons Promulgated
on 23 October 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ERMIAS TSEGAY
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's claim for reasons explained in her letter dated 16 December 2016.
2. Judge Mozolowski dismissed the appellant's appeal for reasons explained in her decision promulgated on 21 March 2017.

3. The appellant contends that he is a national of Eritrea, but the respondent and the First-tier Tribunal did not find that to be established.
4. In terms of the Tribunal Procedure (UT) Rules 2008, rule 23 (1A), the appellant's application for permission to appeal now stands as the notice of appeal to the UT. It sets out grounds under two headings:
 - (1), "errors of law when reaching findings with no or [no] sufficient evidential basis", sub-divided as:
 - (i) error at ¶25 – 26 in findings on the language the appellant would have spoken with his uncle and aunt and outside the home, in particular the judge's statement that she would have anticipated bilingualism to be the norm;
 - (ii) error at ¶28 in finding that the appellant could have gained knowledge from the internet, in absence of evidence of what was on the internet; irrationality in light of accepting appellant had returned to Eritrea for 2 years;
 - (iii) findings at ¶31 not supported by evidence;
 - (iv) finding at ¶33 that appellant might have had a right to reside in Ethiopia, not based on any evidence;
 - (2), "failing to be slow in drawing adverse inferences from omissions at screening interview".
5. Mr Winter submitted along the lines of the grounds, and further as follows. The appellant had explained how it came about that he spoke only Amharic and not Tigrinya. His claim was consistent with the background evidence, as it suggested that many people of his background were bilingual, but not all. It was unusual to make a finding against an appellant based on having too much accurate knowledge. His knowledge was accurate but only of basic facts and might well have been acquired as he claimed. There was no real contradiction arising from the screening interview on 24 June 2016. The appellant was recorded there as saying he was an Orthodox Christian but he quickly corrected that in a letter from his solicitors dated 11 July 2016. His suggestion was that the interpreter made an incorrect assumption when he said he was Christian. He also had produced an adminicle of evidence in support, a letter dated 12 December 2017 confirming his attendance at church [since his arrival in Glasgow].
6. Mr Matthews submitted thus. Ground 1 was mainly concerned to explain away the appellant's inability to speak Tigrinya. No error was suggested in the judge's summary at ¶23, 24 and 27 of the background evidence. That set the scene for her analysis at ¶25-26. The reasons given there were all sound. At ¶31 there was no lack of evidence to support the conclusion reached; the paragraph sensibly said there was no good explanation in the appellant's version of events for abandoning his young sister, and a planned illegal exit through an agent would take time and money to organise. The observation that the appellant might have had a right to reside in

Ethiopia was justified but it was only an aside and not decisive. The finding on the appellant's religion was not based only on the record of the screening interview but on the nature of his knowledge of Christianity which was more consistent with Orthodoxy than with Pentecostalism (decision ¶38, refusal letter ¶17). The letter from the church was correctly found not to help him very much. It showed attendance only subsequently to his claim and the church was multi-denominational [that is correct, although I note the letter does say the congregation is "predominantly Pentecostal"].

7. I reserved my decision.
8. There was no need for specific evidence that basic facts about Eritrea are readily to be found on the internet. That is well within contemporary judicial knowledge.
9. On inability to speak Tigrinya, the judge reasoned at ¶25 – 26 thus:
 - (i) If Tigrinyan, the appellant would have spoken Tigrinyan at home with his uncle and aunt, not Amharic;
 - (ii) Prior to independence, even Eritreans spoke Amharic as the official language, but not at home and among friends, and bilingualism would be the norm;
 - (iii) It would be unusual for a Tigrinyan family to perpetuate insistence on Amharic;
 - (iv) It was significant that the appellant was monolingual;
 - (v) He claimed to understand but not speak Tigrinyan, but if he did understand it, he would be able to speak it to some extent;
 - (vii) He had not verified his claim to be able to understand Tigrinyan;
 - (viii) Taking account of the lower standard of proof, he had not shown he is Tigrinyan.
10. That is plainly sensible reasoning, derived from both the background evidence and the appellant's specific evidence.
11. The judge resolved the issue "without prejudice" to the rest of the appellant's claim – an approach favourable to him. Her resolution must be placed now also in the context that the claim went on to fail "in the round".
12. The judge's findings at ¶31 do not lack an evidential basis. They are based on rational analysis of the shortcomings of the evidence.
13. The "finding" at ¶33 is no more than an incidental aside.

14. The judge would be aware of the common principle of exercising caution over screening interviews. There was a record which was inconsistent with later claims. She made no more of that than she was within her rational scope, and she had other good reasons, in which no error is suggested, for finding the appellant not to be a Pentecostalist. In any event, his claim fell at the point of failing to establish that he is Eritrean.
15. The appellant has not shown that the judge's decision had no legally adequate basis in the evidence, or that its making involved the making of any other error on a point of law. His grounds amount to no more than insistence and selective disagreement on the facts.
16. The decision of the FtT shall stand.
17. No anonymity direction has been requested or made.

A handwritten signature in black ink, appearing to read "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial "H" that loops around the first letter of the name.

20 October 2017
Upper Tribunal Judge Macleman