Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/01525/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 15 December 2017

Decision and Reasons Promulgated
On 15 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

LIYA GOITOME
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Beadnell (Legal Representative, IAS Manchester)
For the Respondent: Mr C Bates (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant arrived in the UK in August 2016 and claimed asylum on the basis that she is Eritrean and a Pentecostal Christian, that she had lived in Ethiopia until deported the Eritrea in 2000 before living in Sudan, returning to Eritrea and then coming to the UK. The claim was rejected for the reasons given in the Refusal Letter of the 29th of January 2017. The Appellant's appeal was heard by Judge Pickup on the 14th of March 2017 and dismissed in a decision promulgated on the 29th of March 2017. The Appellant sought permission to appeal to the Upper Tribunal in grounds of application of the

7th of April 2017 permission being granted by Designated Judge McCarthy on the 2nd of August 2017.

2. The Judge found that the Appellant had not taken reasonable steps to establish that her nationality was not Ethiopian for the reasons given in paragraphs 34 to 36. The Judge had regard to the Appellant's preferred language not being Tigrinyan and evidence that Ethiopian was used by Eritreans who had been deported, paragraphs 38. The Judge also rejected the Appellant's claim to be of the Pentecostal faith.

3. The grounds of application argued that the Judge had not had sufficient regard to the evidence relating to the language that the Appellant speaks would be Ethiopian and that the Appellant's findings that Tigrinyan would be her home language was insufficiently reasoned. Secondly it is argued that the approach to the Appellant's claimed deportation should have been made explicitly. With regard to the Appellant's faith the findings made were not consistent with the evidence relating to the evidence of corruption and the ability of a person to obtain their release and the reasons were not sufficient, it was not clear if the Appellant's witness's evidence had been accepted. Fourthly the Judge had erred in respect of the Appellant's efforts to establish her nationality and had not had regard to the totality of the evidence.

4. At the Upper Tribunal hearing the parties made submissions in line with their respective positions. The submissions are set out in the Record of Proceedings and referred to where relevant below. Mr Bates submitted that the key issue in the appeal was the Appellant's nationality, if that was accepted then it was accepted that the Appellant would be at risk on return.

5. The Judge's conclusions centre on the Appellant's use of Ethiopian rather than Tigrinyan and the Judge's findings that the Appellant's lack of Tigrinyan being at odds with his finding that that would have been the language that she used at home given her parents' background. The issue of the Appellant's language was discussed as part of the considerations given to nationality.

6. In paragraph 37 the Judge referred to background evidence that Tigringyans maintain their language when living in different countries. It is not clear what source the Judge was referring to in making that observation although it is a common position for ex-patriates of any country having migrated to a different part of the world and the First-tier Tribunal frequently needs interpreters for individuals who have lived in the UK for decades. In paragraph 38 the Judge referred to the evidence that Ahmaric was common among Eritreans brought up in Ethiopia but returned to Eritrea and if another Eritrean language was not spoken they would be unlikely to be Eritrean. The Judge was aware of the Appellant's claim to speak some Tigrinyan and placed that evidence in context.

7. The other two main features of the Judge's reasoning turn on the Appellant's approach to the Ethiopian embassy and the absence of other supporting evidence such as from her school and the position of YG, the witness called in support of the Appellant's case.

8. So far as the approach to the embassy was concerned the Judge clearly took the view that the Appellant's actions in this regard were more of form than substance and that is made clear in paragraphs 35 and 36. With regard to the evidence of YG the Judge discussed his evidence in paragraph 51 and did not treat the exercise as formulaic or superficially. The judge was aware of the decision in YG's appeal and the findings that had been made. The findings were not binding on him and reasons were given for rejecting the claimed support that he gave to the Appellant's case. It is clear that his evidence was not accepted and it was explained why particularly with regard to the inconsistency that the Judge found.

9. In assessing this appeal I have had regard to the guidance of the court of appeal. Burnett LJ in EA v SSHD [2017] EWCA Civ 10 at paragraph 27 gave made the following observations: "Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention *dicta* from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."

10. Having regard to the final line, which can be regarded as a practical approach to Upper Tribunal functions I find that the Appellant knew what the decision was, the decision itself demonstrated that the Judge was applying the appropriate legal principles and coherent reasons were given for the findings that were made. The grounds amount to a disagreement with findings properly made and open to the Judge for the reasons given. The decision is not infected by an error of law and the appeal to the Upper Tribunal is dismissed.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 10th January 2018