



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13987/2018

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 24 September 2019

Decision & Reasons Promulgated  
On 11 October 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

A M  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms M Cleghorn, Council.

For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant claimed to be Eritrean and appealed against a decision of the Respondent refusing his application for international protection. Following a hearing, and in a decision promulgated on 31 May 2019, Judge of the First-tier Tribunal Cope, dismissed his appeal.
2. The Appellant sought permission to appeal. This was granted by Judge of the First-tier Tribunal P J M Hollingworth on 26 June 2019. His reasons for so granting were: -

*"1. At paragraph 81 of the decision the Judge has stated that the Judge has given as much credit as the Judge could to the Appellant for the degree of consistency accepted by the Judge that there was both internally and with the background evidence in the Appellant's claim to be at risk of death or persecutory ill-treatment if removed to Eritrea. The Judge goes on at paragraph 82 to state that the factors which might point towards the Appellant being a witness of truth are completely outweighed by the difficulties which the Judge had identified. The Judge then went on to state that whilst the Judge would accept that some at least of these might not in themselves lead to his appeal being refused there were so many difficulties, many of them significant in themselves, with the evidence that they could not be classed as peripheral or unimportant. At paragraph 83 the Judge referred to in addition there being the very high degree of implausibility concerning significant parts of the Appellant's claim. It is arguably unclear how the Judge has drawn the boundaries between the consistency shown by the Appellant internally and with the background evidence and the difficulties as the Judge refers to these identified in the decision. Given that the Judge accepted that some at least of these difficulties might not in themselves lead to the appeal being refused it is arguably unclear how those difficulties have been construed in the credibility exercise given that the Judge immediately proceeds to describe many of the difficulties as significant in themselves. It is arguable that a significant difficulty in relation to credibility would go to the core of an account. The Judge refers to difficulties significant in themselves not falling within the classification, in effect, of peripheral or unimportant. It is unclear where the boundary has been drawn by the Judge between inconsistency leading to a rejection of credibility and implausibility. The Judge has referred to a very high degree of implausibility concerning significant parts of the Appellant's claim. It is arguably unclear how factors which might point towards the Appellant being a witness of truth as referred to by the Judge at the opening of paragraph 82 of the decision are capable of so pointing and thereby capable of being completely outweighed by the difficulties to which the Judge refers if in fact they are affected by a very high degree of implausibility concerning significant parts of the Appellant's claim given that such significant parts must go to the core of the Appellant's account. At paragraph 84 the Judge concludes this part of the decision by reaching the view that the Judge was not satisfied that the Appellant had shown that it was reasonably likely that he had been telling the truth in connection with his claim for international protection. It is arguably unclear how the standard of proof in a protection claim has been applied by the Judge given the conceptual analysis in relation to credibility and implausibility set out at paragraphs 81, 82 and 83 of the decision. At paragraph 85 of the decision the Judge states that the Judge would make it clear that the Judge did not believe that the events described by the Appellant actually took place. It is arguably unclear where the boundary lies between belief as formulated by the Judge in this context and the standard of proof set against the varying concepts referred to in the preceding paragraphs. At paragraph 87 of the decision the Judge states that the Judge was not satisfied that the Appellant had shown that it is reasonably likely that he had the specific fear of persecution or serious harm which he had claimed. It is arguably unclear how the standard of reasonable likelihood has been geared to the standard of proof in the protection claim put forward by the Appellant given the conceptual analysis in relation to proof set out from paragraph 81 of the decision onwards. It is arguable that an insufficient analysis has been set out in relation to background material in assessing credibility. "*

3. Thus, the appeal came before me today.

4. Both representatives indicated to me that they found Judge Hollingworth's grant of permission to appeal confusing and were unable to understand it. They did though acknowledge that permission had been granted on all grounds and in the circumstances the appeal proceeded by a consideration of whether the grounds drafted by Ms Cleghorn disclosed material errors within the Judge's decision.
5. Ms Cleghorn put forward three grounds albeit that the vast majority of her arguments related to the first which relates to a submission that the Judge's decision contains a "paucity of reasoning". The second ground relates to the failure to consider country guidance and the final ground perversity.
6. Ms Cleghorn argued that at the nub of the Respondent's decision to refuse the Appellant's claim was the issue of whether or not he could speak Tigrinya. At interview, presumably for the purposes of obtaining an interpreter, he was asked which language he spoke and he said Amharic. He said the same in his SEF. He was asked a specific question and he gave a specific answer. He has been consistent throughout that he understands some Tigrinya yet, she acknowledged, he has contradicted himself slightly in his statements by saying that he speaks some Tigrinya also. She says that there are obvious reasons for this. The Appellant wanted to conduct the interviews in the language that he felt most comfortable. There are she submitted "levels of foreign language speaking". She gave the example of a person being able to order a cup of coffee in say "French" but without necessarily considering themselves to be a French speaker. She submitted that this issue alone, in itself, is the only real reason that the claim has been dismissed and is "not enough in the circumstances". The Judge has accepted that it is possible that the Appellant does not speak Tigrinya because he has spent most of his life in Ethiopia in an Amharic speaking community, the friends of his father were all Amharic speaking, and the limited education he had was within Amharic schools. Whilst acknowledging that it is possible that this was the situation the Judge also finds it is consistent with someone who is not from Eritrea. He does this at paragraph 47 of his decision. This, Ms Cleghorn submitted, did not afford the Appellant the "benefit of the doubt" from the outset. The Judge, rather than assessing the evidence in the round has indicated a predisposition toward not believing him.
7. This predisposition is clear throughout the rest of the Judge's decision. For example, he notes that "Miss Cornford (Home Office Presenting Officer) quite properly accepted that the Appellant and Ms [M] (witness) had been consistent (after cross-examination) in their evidence to me about the circumstances that they had known each other in Ethiopia and Eritrea". Nonetheless the Judge goes on to immediately find that the witness is untruthful. There is no justification, Ms Cleghorn asserts, for such a conclusion.
8. She then took me to the Judge's rejection of the Appellant's evidence when making enquiries at the Ethiopian embassy in London to see whether he would be accepted or regarded as an Ethiopian citizen. The Judge notes that if the account given by the Appellant and Ms [M] are taken at face value then "the replies apparently given by the woman at the embassy are not necessarily based on him giving a truthful account of his circumstances to her. If he were not truthful and instead gave false information

then any assessment would not be reliable". Again, Ms Cleghorn submits that without any reasoning, other than his witness is a liar and he must not have told the embassy staff the truth, the Judge has fallen into "assertion/speculation" and has not provided any tangible reason to doubt the Appellant's evidence. Ms Cleghorn submitted that the Judge's "determination" not to believe this Appellant is pervasive throughout his assessment. For example, his conclusion that the Appellant's witness cannot be believed for no reason and that the Appellant must not have given the correct information at the embassy and neither he nor his witness can again be believed (for no reason) and instead of the Appellant learning Amharic because he was immersed in it his whole life, it must mean that actually the Appellant is an Ethiopian.

9. Further, the Judge has failed to apply relevant caselaw (**MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032**). The Appellant's approach to the embassy ought to have been considered in the context of country guidance but this has not been mentioned.
10. Beyond that, albeit that she accepted that the issue of Pentecostalism was really at the periphery of the Appellant's claim, it is difficult to see how the Judge came to conclusions that he did, without specialist knowledge, not only of Pentecostalism but of how services are conducted in Ethiopia. The Judge has failed to provide reasons for coming to the conclusions that he did.
11. Beyond this, there is an element of perversity within the Judge's decision. At paragraph 81 the Judge states: -
 

*"81. I have given as much credit as I can to the Appellant for the degree of consistency that I accept that there is, both internally and with the background evidence, in his claim to be at risk of death or persecutory ill-treatment if he were to be removed to Eritrea."*
12. The Judge then goes on at paragraph 82 of his decision to state that the factors which might point toward the Appellant being a witness of truth are outweighed by the difficulties that the Judge has identified.
13. Ms Cleghorn submits that those difficulties are no more than conclusions that the Appellant's witness is not telling the truth because the Judge says so, that neither the Appellant or witness told the truth at the embassy and that the Appellant speaks Amharic because although it is possible that the Appellant does not speak Tigrinya because although he has spent all but one year and eight months of his life immersed in Amharic speaking communities it is equally consistent with someone who is not from Eritrea, therefore he is not from Eritrea because the Judge says so.
14. Ms Petterson argued that the Judge had in fact developed his point regarding the issue of language and in coming to his adverse credibility findings did not simply rely on the issues identified by Ms Cleghorn in her submissions. Consistency does not necessarily mean credibility. The Judge was entitled to come to the conclusions that he did. The Judge did err in his assessment of the Appellant's Pentecostalism but, in terms of the decision as a whole, this was not a material error. The Judge was

entitled not to accept the explanations that were given by the Appellant in relation to issues relating to language. Adequate reasons have been given.

15. I find, despite the unhelpful grant of permission to appeal, that Ms Cleghorn's grounds are made out. In essence I need deal with only one. For the reasons put forward by Ms Cleghorn the Judge has failed to adequately reason the decision that he has come to. In coming to this conclusion, I have carefully considered the Judge's decision in its entirety and I am not satisfied that it is one which would enable the losing party, the Appellant, to understand just why it is that he has not been believed. For example, the Judge has not adequately reasoned why he rejects consistent evidence from both the Appellant and the witness. He acknowledges at paragraph 81 the level that this reached in terms of internal consistency and consistency with background evidence. The Judge though does not go on to explain why this was not enough. He refers to there being "so many difficulties" with the Appellant's evidence that they cannot be classed as peripheral or unimportant. However, those difficulties are not highlighted within his decision.
16. Ms Cleghorn's grounds "run into each other" but it seems to me that the inadequacy of reasoning within the adverse credibility findings is sufficient, acknowledging as I do that even most of an Appellant's story may seem inherently unlikely but that does not mean that it is not true, to render the Judge's decision unsafe.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Cope.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 9 October 2019

Deputy Upper Tribunal Judge Appleyard