Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07370/2019

THE IMMIGRATION ACTS

Heard at Field House by video conference 20 August 2020 (V)	**Decision & Reasons Promulgated On 12 November 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

N T
(ANONYMITY DIRECTION MADE)

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the original appellant (NT) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:
For the appellant: Mr C. Holmes, instructed by Shawstone Associates
For the respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

2. The appellant (NT) appealed the respondent's decision dated 19 July 2019 to refuse a protection and human rights claim. The respondent was not satisfied that the appellant was an Eritrean national as claimed. The respondent relied on a report prepared by Sprakab following a language analysis interview held on 20 June 2019, which concluded that the appellant spoke Amharic with a 'background in Addis Ababa'. There was a 'very high probability' that his linguistic background was from Ethiopia. The respondent was not satisfied that there was a reasonable explanation for this when the appellant had, on his own evidence, only lived in Ethiopia for a period of four years as a young child and had not lived in Ethiopia for 19 years at the date of the decision.

3. First-tier Tribunal Judge Herbert allowed the appeal in a decision promulgated on 28 February 2020. He summarised the evidence before the First-tier Tribunal. The appellant's evidence included his witness statement, a letter from the Ethiopian Christian Fellowship Church, a receipt from the Ethiopian embassy, a letter from the 'Eritrean community in Lambeth' and background evidence relating to Eritrea [3]. The judge noted that there was also a statement from an additional witness, Mr H, who also attended to give evidence [4]. The respondent's evidence included the Sprakab report and background evidence. The judge recorded the following [5]:

> "… The report was challenged by the appellant's representative on the basis that neither annalyst (sic) is a native Ethiopian, Amharic, or Tigrinya speaker. Although the analysts were born in Eritrea and lived in Ethiopia from the age of 6 and returned there during later years they appear to be based in Sweden which to some extent undermines the capacity that they have to conduct that type of language analysis and keep current with the situation of migrants such as the appellant."

4. Having noted evidence to show that the appellant was suffering from a depressive episode, and acknowledged that this might affect his concentration and ability to recollect events, the judge made the following findings:

> "35. I find that the appellants (sic) credibility has been maintained throughout in that I am satisfied to the lowest standard set out in Kaja (sic) and was born and spent some of his formative years in Eritrea only leaving for Ethiopia when his mother was dying of cancer. I accept that he was deported as were many thousands of people from Ethiopia back to Eritrea and that he left subsequently for Djibouti and then Sudan arriving eventually in Belgium. I do not find that the appellant's account of speaking Amharic is undermined by the linguistic report as the appellant's lifestyle and migration history does not lend easily in itself to a determination that he is simply not Eritrean but must be Ethiopian.

36. The suggestion by the linguist that his language is consistent with a person that is from Addis Ababa discounts the fact that will apply to millions of people living in Ethiopia many of whom are still and have always been native Eritreans. This background ignores that for many years Ethiopia has been one country and was not split into Ethiopia and Eritrea for much of its long and impressive history. I am also concerned with the fact that despite the background of both linguists they are clearly Swedish and therefore likely Swedish was their first language and neither Amharic nor Tigrinya.

37. I am certain that these companies provide an excellent facility for the respondent but on the application and the usefulness of this I note that on the authority before me that their opinion is not determinative of nationality, particularly given the migration pattern of this appellant. I find that the central core of his account has always remained consistent namely that he moved between Eritrea and Ethiopia having originated from Eritrea. I do accept that he is a Pentecostal Christian and as such he would be likely to face persecution if attempting to practice his faith in Eritrea, which banned the religion from 2000. I also note that this was accepted by the respondent in so far as he accepted he was a Pentecostalist.

38. I was also impressed by the evidence given [by] the appellants (sic) witness [Mr H] who I accept did meet the appellant in the circumstances described and that he did know his father. His evidence was completely unrehearsed and came across very clearly not only in his (sic) relation with the church attendance with the appellant but in relation to the visit [to] the Ethiopian embassy. It is hardly surprising that the appellant did not wish to go to the Eritrean embassy because of the dangers that that may pose to himself if he identified himself upon arrival as someone who is trying to establish their Eritrean nationality. He would be particularly worried about the fact that he had avoided military service and there's significant evidence in the objective material that if a person evades military service he may suffer a sentence of imprisonment on return of up to 5 years. The prospect of doing military service has driven hundreds of thousands of Eritreans to leave their country over a period of time and it is still viewed with fear and suspicion by the vast majority of young people in Eritrea. It is one of the most significant driving forces of migration across the Mediterranean and into southern Europe. I take Judicial notice of this fact from the background CPIN and from the various UNHCR reports. In all the circumstances I find that the appellant is likely to face persecution as a Pentecostalist in Eritrea, as a person who has escaped unlawfully and as a person who has escaped military service. I find that there is ample evidence to the lowest standard set out in Kaja (sic) that he is not Ethiopian and is an Eritrean national who is forced to live in the circumstances described. I do not find the respondents (sic) language report displaces the weight of evidence produced by the Appellant for the reasons stated above."

5. The Secretary of State appealed the First-tier Tribunal decision on the following ground:

"1. The appellant's nationality is the key issue in this determination. In reaching a decision on this, the Sprakab language report was the essential

piece of evidence. The Tribunal dismissed the relevance of the report. However, it is submitted that this was for spurious reasons that are not sustainable. The reasons are two-fold; that while the consistent (sic) with a person that is from Addis Ababa, this applies to millions of people; and that the authors of the report are Swedish.

2. It is respectfully submitted that neither of these reasons stands up to scrutiny. The first reason is speculation on the part of the Tribunal which, unlike the authors of the report, has not been trained to discern differences in linguistics. The opinion expressed by the Tribunal has no objective basis and is simply an assertion by the Tribunal. The second reason is simply nonsense. Applying this principle to any form of decision-making shows the incompetence of the Tribunal's approach; this decries the use of any specialist training or the ability to make expert judgements on anything outside one's own direct experience."

Decision and reasons

6. The appellant says that he was born in Assab in Eritrea. He accepts that his first language is Amharic. He says that he understands some Tigrinya but does not speak it well. He speaks a little Arabic. He says that he was taken to Ethiopia in 1996 when he was seven months old. His mother died shortly after. In interview he said that his family lived in 'Merkato' [qu.66], which was never clarified, but publicly available information indicates is likely to be an area of Addis Ababa. The appellant's evidence was that he lived in Ethiopia with his father and another relative called Bethlehem for about four years before being deported to Eritrea in 2000. The family returned to live in Campo Sudan, an area of Assab, Eritrea where the appellant says most people speak Amharic. He remained there until 2004 before travelling to Djibouti, Sudan and eventually on to Europe.

7. Even if the Sprakab report was taken at its highest, it is perhaps unsurprising that the analysts concluded that he spoke Amharic consistent with a background in Addis Ababa. The appellant says that he lived in Merkato until he was around four years old, which is a formative age when he would have been learning to speak. The same section of the report recognised that Amharic is still spoken in some areas of Eritrea such as Assab, which was consistent with the evidence given by the appellant. The report does not explain what the distinction might be between Amharic spoken in Addis Ababa and how it might be spoken elsewhere in Ethiopia or in Assab. The few places where the report made a comparison, it was with Tigrinya words.

8. The decision letter extrapolated from the Sprakab report that it was unlikely that the appellant would continue to speak Amharic in a way that suggested a background from Addis Ababa when he had not lived in Ethiopia for 19 years. The decision letter also appeared to find it implausible that his father did not teach him Tigrinya and noted his lack of language ability in Tigrinya and Arabic. The appellant did not claim to speak Tigrinya with any fluency. He said that he continued to speak Amharic when he returned to Eritrea with his father. The respondent's own Sprakab report accepted that Amharic was spoken in parts of Assab. The

decision letter also accepted that there was a small population of Amharic speakers in Djibouti. Given that the appellant also said that he understood a little Arabic it was not implausible that he could manage to live in Djibouti and Sudan for a period as claimed. In any event, whether he spoke Arabic was immaterial to the question of whether he was an Eritrean or an Ethiopian national. Even if he did not, many people are able to remain in countries, including the UK, without speaking the local language.

9. This was the background to the evidence before the First-tier Tribunal. The judge noted the experience of the analysts at [5] of the decision. At [21] he referred to the decision in *RB (Linguistic evidence - Sprakab) Somalia* [201] UKUT 329, which was cited in the decision letter. He emphasised the main findings from the case, which confirmed that linguistic analysis reports from Sprakab should carry considerable weight but should not be treated as infallible. The judge went on to note that the Upper Tribunal in *RB* found that Sprakab reports should not be considered as determinative of nationality without first considering all the available evidence [22].

10. The respondent also relies on the Supreme Court decision in *SSHD v MN & KY* [2014] 1 WLR 2064. The Supreme Court found that the findings in *RB* were sufficient to demonstrate acceptable expertise and methodology by Sprakab "which can properly be accepted unless the evidence in a particular case shows otherwise". It noted that the Upper Tribunal ought to give further consideration to how the basis for the geographical attribution of particular dialects or usages can be better explained and not left implicit. The Tribunal would need to be able to satisfy itself as to the data by reference to which analysts make judgments on the geographical range of a particular dialect or usage. A Sprakab report needs to explain the source and nature of the knowledge of the analyst.

11. Keeping these principles in mind I find that there is nothing in the judge's findings to indicate that he erred in his assessment of the Sprakab report, and even if he did, that it would not have made any material difference to the outcome of the appeal. The judge considered the question of the appellant's nationality in light of all the evidence, which included his assessment of the appellant's credibility, the fact that his account was consistent with the well documented deportation of many Eritreans from Ethiopia in 2000, the fact that the respondent accepted that he had shown knowledge of Eritrea, the credible evidence of a witness who had known his father in Eritrea and attended the Ethiopian embassy with him (where he was refused registration). It was open to the judge to observe that the appellant's account of moving from Ethiopia, Eritrea, Djibouti, Sudan and then onwards to Europe "does not lend easily in itself to a determination that he is simply not Eritrean but must be Ethiopian".

12. Although the judge could have given more detailed analysis to the content of the report and the backgrounds of the analysts, in my assessment it was open to him to observe that Amharic was a widely spoken language. As I have already noted above, the report did not, as a matter of fact, go

into the kind of detail suggested by the Supreme Court to explain why the appellant's dialect was typically from Addis Ababa or how it might differ from Amharic that the analysts accepted was also spoken in areas of Assab. It seems clear that the judge had taken into account the experience of the analysts, but it was open to him to observe that they were unlikely to be native speakers albeit he appeared to do so based on assumptions made about the analysts names and the summary of their experience. However, it was reasonable to infer from that information that the analysts were not likely to be nationals of Ethiopia or Eritrea. Their names were of typically northern European origin and the summary of their educational and work experience was primarily focussed in Sweden.

13. Even if the judge's approach could be criticised for making assumptions about the analysts' likely nationality, it was unlikely to make any material difference to the outcome. The appellant's evidence was that he lived in an area of Addis Ababa for about four years at a time when he was likely to be developing language skills. He then lived in an area of Assab which the background evidence described as "the former domain of Ethiopian residents" before spending much of the rest of his childhood outside Eritrea. In light of this evidence it was open to the judge to conclude that the Sprakab report was not determinative of the appellant's nationality given his peripatetic childhood.

14. It was open to the judge to observe that Amharic is a widely spoken language. As a matter of fact the Sprakab report did not explain anything more about the "geographical range of a particular dialect or usage" or explain how it might compare to other Amharic dialects. The judge acknowledged that such reports should normally be given weight but was not obliged to treat it as determinative. After having considered the report alongside the other evidence before him he concluded that it was reasonably likely that the appellant was Eritrean as claimed. For the reasons given above I conclude that his findings were within a range of reasonable responses to the evidence and were open to him to make.

15. The respondent did not challenge any of the other findings relating to risk on return to Eritrea.

16. I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The First-tier Tribunal decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law

The decision shall stand

Signed M. Canavan Date 10 November 2020

Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.