



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02962/2020**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 19 July 2022**

**Decision & Reasons Promulgated
On the 10 January 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**MBJ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J Howard, Fountain Solicitors

For the Respondent: Mr. C Williams, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant claims to be a national of Eritrea. He arrived in the UK on 8 November 2019 and claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 18 March 2020. The respondent referred to the various accounts provided by the appellant of his nationality and his reasons for leaving Eritrea and/or Ethiopia. The respondent rejected the appellant's claim to be a national of Eritrea. The respondent said:

“35. You have provided several different internally inconsistent accounts of your nationality. It has furthermore been noted that you were unable to provide an account of your Eritrean nationality however you were able to answer questions on your Ethiopian nationality in line with objective country information. It is also considered that your passport was accepted as a genuine passport. Taking everything in the round, your nationality has been accepted as Ethiopian and not Eritrean.”

2. The respondent went on to address the appellant’s claimed fear of return to Ethiopia and Eritrea. She rejected the appellant’s claim that the appellant will be at risk upon return to either country. As far as the risk upon return to Ethiopia is concerned the respondent said:

“51. You have provided several different accounts of your fear in Ethiopia. You stated you were in fear due to your religion however you later stated this was not true. You then stated you did not have a fear in Ethiopia at all before advising your fear was based on your political activity. Once your political activity was explored, you provided a further internally inconsistent account of events and you were unable to provide an account which shows that you have any political involvement in Ethiopia. You further stated that you are in fear as you are waiting on your identity however it has already been accepted you are a national of Ethiopia. Your claim to have received adverse attention in Ethiopia has therefore been rejected.”

3. The appellant’s appeal against the respondent’s decision to refuse his claim for international protection was heard by First-tier Tribunal Judge Shepherd (“Judge Shepherd”) and dismissed for reasons set out in her decision promulgated on 6th April 2021.
4. The appellant advances four grounds of appeal. First, he claims Judge Shepherd materially erred in law, in finding “*to the lower standard*” that the appellant is an Ethiopian national. The appellant relies upon the decision of the Upper Tribunal in Jamila Omar Hamza v Secretary of State for the Home Department [2002] UKIAT 05185, in which Mr Justice Collins highlighted that if a judge is going to make a positive finding against the appellant regarding the issue of nationality, then the judge must do so not on the asylum standard, but on a higher standard which would be the balance of probabilities. Second, he claims in considering the Eritrean Nationality Proclamation (No 21/1992), Judge Shepherd failed to apply

guidance set out in FA (Eritrea - nationality) Eritrea CG [2005] UKIAT 00047. Third, the appellant had provided his Eritrean birth certificate and Judge Shepherd fails to provide adequate reasons as to why weight cannot be attached to that document, and fails to give adequate reasons for concluding that the appellant's Ethiopian passport is likely to be genuine. Fourth, the appellant claims Judge Shepherd gives inadequate reasons for not attaching weight to a letter from the police provided by the appellant, and in reaching her decision failed to adequately consider the background material regarding those perceived to have supported the PG7.

5. Permission to appeal was granted by Upper Tribunal Judge Blundell on 21st September 2021.
6. Before me, Mr Howard submits Judge Shepherd clearly failed to apply the correct standard of proof at paragraph [92] of her decision. He submits Judge Shepherd found it proved, to the lower standard, that the appellant is an Ethiopian national. She should have considered whether, on the balance of probabilities, the appellant is an Ethiopian national. Mr Howard submits the error is material because neither Eritrea nor Ethiopia recognise dual nationality. He submits Judge Shepherd appears to accept the appellant's parents are Eritrean and should therefore have accepted that the Eritrean Nationality Proclamation (No.21/1992) is such that the appellant has Eritrean nationality. He submits that in FA, the Tribunal considered the Eritrean Nationality Proclamation and noted the evidence of Gebratnsae Tewelde, that if a person's parents or grandparents were born in Eritrea, that person would certainly be entitled to Eritrean nationality. Mr Howard submits that if Judge Shepherd was not satisfied the appellant's parents are Eritrean, she should have made an express finding to that effect. Mr Howard adopted the third and fourth grounds of appeal without any further elaboration in his submissions before me.

7. In reply, Mr Williams accepts Judge Shepherd adopted the wrong standard of proof and should have considered whether the appellant is an Ethiopian national on the balance of probabilities. However, he submits that error is immaterial in this appeal because of the extensive reasons given by the Judge for rejecting the appellant's claim that he is a national of Eritrea and the finding that the appellant is a national of Ethiopia. He submits Judge Shepherd would undoubtedly have reached the same decision.

8. As to the second ground of appeal, Mr Williams submits Judge Shepherd was not bound to accept that the Eritrean Nationality Proclamation (No.21/1992) is such that the appellant has Eritrean nationality. He submits Judge Shepherd properly had regard to the decision of the Upper Tribunal in Hussein and another [status of passports; foreign law] [2020] UKUT 00250 in which the Tribunal confirmed that foreign law is a matter of fact and must be proved by evidence. It is not sufficient to produce statutes and assert that the statute represents the whole of the law on the subject. Here, the appellant simply relied upon a statute that is now 30 years old without any expert evidence as to its operation and effect. As for the remaining grounds, Mr Williams submits Judge Shepherd clearly considered all the evidence before her including the documents relied upon by the appellant. He submits it was open to the judge to note the significant inconsistencies in the documents as she did at paragraph [77], and to have regard to the way in which the documents came to be in the possession of the appellant's aunt. Mr Williams submits there is no element of the appellant's case that Judge Shepherd found to be credible at all. He submits the adverse credibility findings are not challenged and the only conclusion that the Judge could have properly reached, even on a balance of probabilities, is that the appellant is an Ethiopian national. He submits it was open to Judge Shepherd to conclude the appellant is not at risk upon return to Ethiopia for the reasons she gave.

Discussion

9. The respondent accepts that in reaching her conclusion that the appellant is a national of Ethiopia, Judge Shepherd applied the lower standard rather than that of the balance of probabilities. However I accept, as Mr Williams submits, that was immaterial to the outcome of the appeal. The burden of proof was on the appellant; it was for him to prove that he is a national of Eritrea as he claims. Here, one only has to look at the various inconsistencies in the claims that were made by the appellant from the outset, and that were referred to by the respondent in her decision and then considered by Judge Shepherd in her decision, to see that the appellant is a wholly incredible and unreliable witness.

10. Judge Shepherd set out the background to the appellant's claim for international protection at paragraphs [7] to [12] of her decision. She heard evidence from the appellant and a witness, who is referred to as [K]. Both gave evidence with the assistance of an Amharic interpreter. Judge Shepherd identified the issues in the appeal in paragraph [19] and summarised the oral evidence she heard in paragraphs [22] to [45] of her decision. In paragraphs [72] to [86] of her decision, Judge Shepherd analysed the evidence before her regarding the appellant's claim to be a national of Eritrea. She had regard to the documents relied upon by the appellant in support of his claim, and the evidence before her from the appellant and his witness. She referred to significant inconsistencies in the evidence before her and found that the appellant is not a credible witness. Having also considered the evidence of the witness, [K], at paragraph [86] of her decision, Judge Shepherd said:

"Overall, I find it is not proved to the lower standard that the Appellant is Eritrean. As he is not Eritrean, his claim for protection in respect of Eritrea fails."

11. Therefore, Judge Shepherd did not accept, even to the lower standard that the appellant is a national of Eritrea as he claims. If Judge Shepherd had left matters there, the appellant would have no cause whatsoever for complaint. However, at paragraphs [87] to [91], Judge Shepherd considered whether the appellant is a national of Ethiopia. Again, she

referred to the evidence before her, including an Ethiopian passport held by the appellant, and the claims that have been made by the appellant when he previously applied for leave to enter the United Kingdom in 2015. In paragraphs [89] to [92] of her decision, Judge Shepherd said:

“89. At the hearing, the Appellant confirmed that he said he was Ethiopian when he applied for leave to enter the UK in 2015. There is no evidence to say the passport was questioned on this occasion. The Appellant said in his screening interview that his fingerprints were taken when he obtained this passport. Mr Williams pointed out at the hearing that the Appellant had said in his asylum interview that stating he was Ethiopian on the application had been a mistake, whereas at the hearing he said it was intentionally false and was done in order to make sure the application succeeded.

90. There is no evidence, other than the word of the Appellant to say that the passport was false. I have found the Appellant to not be credible. In the round, I find that the Ethiopian passport is likely to be genuine.

91. In his screening interview, the Appellant claimed asylum as a national of Ethiopia. He admits he lived in Ethiopia from at least the age of two, attended school and work and speaks Amharic. He was also able to marry his wife there in 2003 (stated in his asylum interview). I accept that in his asylum interview the Appellant seemed to know more about Ethiopia than Eritrea. The Appellant does not say that the police in Ethiopia raised the question of his nationality when they arrested and detained him, which would perhaps have been expected if he was not Ethiopian.

92. Overall, I find it proved to the lower standard that the appellant is Ethiopian.”

12. The appellant himself accepted that he had previously claimed to be a national of Ethiopia when he applied for leave to enter in 2015. Judge Shepherd considered the contradictory evidence of the appellant regarding his previous claim to be a national of Ethiopia. At paragraph [90], Judge Shepherd said, “*I find that the Ethiopian passport is likely to be genuine*” (my emphasis). The use of the words “is likely” in that sentence, in my judgement suggests that Judge Shepherd was addressing whether it is more likely than not, that the Ethiopian passport was genuine (i.e. on a balance of probabilities). Taking the appellant’s evidence that he had previously claimed to be a national of Ethiopia, the adverse credibility findings made against the appellant, and the finding that the appellant held a genuine Ethiopian passport, would not have

resulted in a different outcome. I am entirely satisfied that an examination of the reasons given by Judge Shepherd for reaching her finding regarding the appellant's nationality indicate that the same outcome would have been reached irrespective of whether she applied "the lower standard" or "a balance of probabilities".

13. Considering the question of nationality in the context of the Proclamation would not have produced a different outcome. Judge Shepherd carried out a detailed analysis of the evidence and was not bound to accept that the appellant has Eritrean nationality by operation of the Eritrean Nationality Proclamation (No.21/1992). In FA the Tribunal referred to the evidence of Gabratnsae Tewolde, Operations Chief in the Department of Immigration and Nationality for Eritrea. Importantly however, in 7.1.3, they recorded his claim that the entitlement would have to be proved by the individual, as one would anywhere in the world. Here, it was therefore for the appellant to establish his entitlement, and he simply failed to do so.
14. The appellant's criticisms of the weight attached to the documents relied upon by the appellant and the adequacy of the reasons given by Judge Shepherd have no merit. In Tanveer Ahmed v SSHD [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. On any reading of the decision of Judge Shepherd, she did so. The document relied upon by the appellant could not be considered in isolation. Judge Shepherd clearly explains at paragraphs [77] and [78], the concerns she had about the documents when considered against the evidence as a whole.
15. The appellant's general assertion that Judge Shepherd failed to give adequate reasons for her decision adds nothing. I have reminded myself

of what was said in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the appellant to know why he has lost, and it is also to enable an appellate court or Tribunal to see what the reasons for the decision are, so that they can be examined in case there has been an error of approach. Reading the decision as a whole it is clear Judge Shepherd carefully considered the claims advanced by the appellant and reached conclusions and findings that were open to her on the evidence before the Tribunal. She gives adequate reasons for the findings made.

16. It is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. It is in my judgement clear that in reaching her decision, Judge Shepherd considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to her on the evidence. A fact-sensitive analysis of the risk upon return was required. In my judgement, the findings made by Judge Shepherd were rooted in the evidence before the Tribunal. It was open to her to conclude that the appellant is not a witness of truth for the reasons set out in her decision. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her. I am satisfied that the Judge's decision is a sufficiently reasoned decision that was open to her on the evidence.
17. It follows that I dismiss the appeal.

Notice of Decision

18. The appeal is dismissed.

19. I make an anonymity direction.

Signed **V. Mandalia**

Date 19th December 2022

Upper Tribunal Judge Mandalia