



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000385
First-tier Tribunal Nos:
PA/51391/2020
IA/00718/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 27 June 2024**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**BTT
(ANONYMITY ORDER IN FORCE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Aziz, Counsel instructed by Shawstone Solicitors

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Interpreter: Mr T Marian interpreted the Amharic and English languages

Heard at Field House on 24 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by a person claiming to be a national of Eritrea and a Pentecostal Christian against a decision of the Secretary of State on 26 August 2020 refusing him international protection. This particular appeal has previously been determined unsatisfactorily and the decision set aside by Upper Tribunal Judge Rintoul who ordered that the appeal be redetermined in the Upper Tribunal. The applicant has previously applied for asylum on a similar or substantially the same basis and his application was refused and an appeal dismissed in a determination of First-tier Tribunal Judge C J Woolley promulgated on 3 June 2014. This very late decision was based closely on a draft that I received from the typist on 17 April 2023.
2. When the First-tier Tribunal determined the present appeal the judge summarised Judge Woolley's findings and recognised that these were a necessary starting point. Judge Woolley decided that the appellant spoke Amharic in a way that gave no indication of Eritrean influences and that he understood or remembered too much about life in Eritrean and Assab culture for someone who had only lived there for the two years between the ages of 6 and 8 years. Judge Woolley did not accept that the appellant had told the truth about fleeing Eritrea in 2002 or about leaving Ethiopia. The judge did not accept that the appellant had been involved in Pentecostalism in either Eritrea or Ethiopia and, generally, was not persuaded that the appellant came from Eritrea or would face any risk in the event of his return to Ethiopia.
3. Although Upper Tribunal Judge Rintoul set aside the First-tier Tribunal's decision, Judge Rintoul found that the Tribunal was entitled to be unimpressed by an expert report tending to confirm that the birth and death certificates purporting to come from Eritrea were genuine documents. Judge Rintoul said expressly that the First-tier Tribunal Judge "was entitled to conclude that little or no weight should be attached to that report on that aspect".
4. Judge Rintoul similarly found that the First-tier Tribunal Judge was entitled to criticise the expert for straying outside his area of expertise and entering into advocacy.
5. The fundamental problem with the First-tier Tribunal's decision is that it paid no regard to a supporting document from the Eritrean Community. Judge Rintoul's instruction was that "the appeal will be remade in the Upper Tribunal in the light of the findings that ground 1 and 2 are not made out".
6. Before me it was made plain that the appellant is also pursuing elsewhere an application for leave on human rights grounds where his relationship with his children will be considered. I was concerned with whether or not the appellant is a refugee and in this context that means whether or not he is Eritrean and if he is Eritrean, if he is a Pentecostal Christian. It is for the appellant to prove his case to the low "real risk" standard.
7. The appellant began by adopting a statements dated 28 January 2020, 17 February 2021 and 22 December 2022.
8. In the first statement the appellant identified himself as a practising Pentecostal Christian who was born in Assab in Eritrea in 1994. He said he was of Tigrayan ethnicity.

9. He was told by a family friend that he was taken to Ethiopia in 1995 by his parents who were looking to better themselves but they were living illegally and were caught and in 2000 they were “deported” back to Eritrea where they resumed life in Assab. He explained that Pentecostal Christianity was banned in Eritrea and, again according to the family friend, in September 2002 his parents were praying when they were arrested. The family friend, one Ghebre Youhannes, was contacted by neighbours after the appellant’s parents had been removed and collected him and looked after him. He was taken to Sudan and then in 2005 he was taken to Ethiopia. Whilst in Ethiopia he learnt that his parents had died, his father in 2004 and his mother in 2008. In 2010 Mr Youhannes disappeared from his life. He did not know what had happened to him but the appellant had to look after himself thereafter. He started working as a vehicle washer.
10. There was then trouble where the appellant was suspected of theft and he absented himself before the police were involved because he should not have been in Ethiopia.
11. He gave an account of his journey to Sudan and then Libya and then Italy eventually the United Kingdom where he claimed asylum but was unsuccessful. He then talked of his relationship with a partner and how they had children.
12. He said how he managed to contact his uncle through the help of the Eritrean Community in London in August 2019. He had made earlier unsuccessful attempts to contact his uncle. Having succeeded in 2019 he obtained documents about his parents’ death. The statement of 17 February 2021 repeated in outline much of his earlier statement.
13. He then explained how he received his birth certificate by post at the end of 2019 and gave it to his solicitors in January 2020 to support a fresh claim. He said that his birth certificate was registered on 24 May 2001 by his father following their deportation, I assume from Ethiopia. He claimed he had no contact with his paternal uncle until 2019 and his maternal uncle was then receptive to helping him get certificates. He said, “It was with the help of the Eritrean Community member called Ganet Adhnum that he was able to make contact with my uncle.”
14. He explained in some detail how he had known her when they were in Eritrea but lost contact. They resumed contact in Sudan and he met her at the Eritrean Community in 2019. She passed on messages with a view to finding the appellant’s uncle and was successful.
15. He talked about the individual documents saying that his mother died on 16 August 2008 and the death was registered on 16 December 2008. His father died on 16 August 2004 but the death was registered on 16 June 2010. He also talked about a letter from his pastor, one Fasil Bellete, who confirmed that the appellant had been attending church online which was the best that could be done in the Covid pandemic.
16. He then outlined attempts to visit the Ethiopian Embassy asking them to consider his nationality. He went with a friend called Abel Danial but the embassy was closed.

17. In his statement of 22 January 2022 the appellant relied on the previous statements. He also commented on the use of English language in his birth certificate. He said that in Eritrea Arabic, Tigrinya and Amharic languages are commonly used, he implied as official languages, but also that birth certificates were often provided in English for use abroad. He said he was present in Eritrea when his birth certificate was issued and he asked for two versions, one in English to use abroad and another in Tigrinya and he paid 75 nakfa for each certificate. His father's death certificate was provided by his uncle and came in the English language version because that is what he thought would be most useful. He said his uncle was frightened to produce a statement explaining what had gone on and he was concerned for his uncle who, unlike him, was actually in Eritrea. He had in fact been twice to the Ethiopian Embassy. He said the Ethiopian Embassy wanted some Ethiopian based documents such as an identity card or a driving licence but he had nothing to offer. He later found a picture that he had taken to the embassy. He had also submitted two letters from the church and said he was now attending church. He found it difficult to answer the simple question "Will you practise religion in Eritrea", saying that it was banned.
18. He was cross-examined by Ms Ahmed.
19. He was asked questions about his explanation for using different languages in Eritrea when it was pointed out that he did not actually say that English was one of the languages that was used. It was suggested that the claim that official certificates are available in a choice of languages was an afterthought rather than a true description of how things are organised in Eritrea.
20. She pointed out that in his most recent statement he had said "I was present in Eritrea" when his birth certificate was issued. In his 2021 statement he referred to receiving his birth certificate by post at the end of 2019 and it not being available in English at the time of his initial appeal. He indicated the birth certificate was in the care of his uncle who was present when it was issued.
21. The appellant did not accept there was any contradiction. He said he was in the United Kingdom when his birth certificate was sent to him, that says nothing about where he was when it was issued.
22. He was then asked questions about his mother's birth certificate. His mother is said to have died on 16 August 2008 but the birth certificate appears to be dated 2018 even though death was supposed to be registered fairly soon after the death. The appellant said that it was usual in Eritrea register a death when a person wanted a certificate rather than shortly after the death occurred.
23. He accepted that his father's death was not registered until 2010 even though his father died, it is said, on 16 August 2004. He said that the certificate was issued as a result of a discussion between the appellant and his uncle about his later father's property.
24. He was then taken to the letter from the Eritrean Community in Lambeth. He was asked if he knew who had actually performed the assessment. He said they were people who knew he had claimed asylum and did not know he had been found untruthful by the Immigration Judge in 2014.
25. He was then asked about his uncle. He accepted that he had said that his uncle was frightened to give a statement. It was pointed out that his uncle had written

a letter encouraging the appellant to avoid military service. The appellant did not accept that there was any contradiction.

26. He was asked about the apparent contradiction in the supporting letters from the church who seem to be from people who claimed that they both did and did not know him. He could not say much about that but he said that the church pastor did support him.
27. The witness Abel Danial gave evidence.
28. He had made statements dated 9 December 2022 and 17 February 2021. The statements deal with a futile attempt to obtain nationality documents. The statement dated 17 February 2021 refers to a visit when the embassy was closed and that the officials at the Ethiopian embassy were not very interested. The appellant was asked for identification documents.
29. Mr Danial confirmed in cross-examination that he had only known the appellant in the United Kingdom and therefore was not in a position to say anything about his links with Eritrea. He could only pass on what the appellant had told him.
30. There is a statement from Rosa Elias dated 4 February 2020. This asserts that the writer met the appellant at a Pentecostal conference at the King's Cross Fellowship Church in London in 2015 and they developed a relationship leading to partnership and their having children. Ms Elias identifies as an Eritrean national from the Tigrinya ethnic group and a Pentecostal Christian. She knows nothing about the appellant's nationality.
31. There is an expert report from Dr Birchall. Dr Birchall describes himself as a Development Economist with considerable experience of working in Africa. He has a Master's degree from the School of Oriental and African Studies and is an associate professor at two African universities. He said that he was given original copies of the death certificate of Bekelech Halie, Tesfaye Tesfamariam and the original birth certificate of the appellant. He gave details of his methods and approach. Dr Birchall considered each of the documents to be genuine although there were reservations and he confirmed that in his experience such documents might be well obtained in the English language.
32. I have considered the letter from the Bread on Life Church International dated 17 February 2021. It is about the appellant and confirms that the appellant had been attending online services broadcast since the beginning of 2021. The letter is dated 17 February 2021 and is signed by Pastor Fasil Bellete. The pastor confirms that the appellant is a Pentecostal Christian. It includes the sentence: "Due to the lockdown, there is no people gathering at our hall therefore, we could not get to know him in person".
33. There is a letter dated 29 January 2020 also from the Bread of Life Church International also signed by Pastor Fasil Bellete. It says how the appellant had been "attending our church since 2017 and he comes regularly to our church every Sunday main worship service".
34. I read carefully the letter coming from the "Eritrean Community in Lambeth" dated 13 February 2020 carefully. Although it is not difficult to understand the register suggests it is written by someone who is not using their first language when they are writing in English.

35. I am slightly concerned that pages 52 and 53 of the respondent's bundle are not necessarily successive pages. The last sentence on page 52 is "... truthfully without any source of embellishments" but page 53 begins, with a lower-case letter: "expediently we have issued the elders the scratch phone card which is the cheapest means of communication to Africa)". I cannot help thinking something is missing. The failure to capitalise the word "expediently" is surprising if it is complete. The other sentences begin with capital letters and the brackets closed after the word "Africa" have not been opened. However I can only go on the evidence I have got. The note explained that there are a team of elders who are contacted in the United Kingdom when there are issues of Eritrean nationality. The document states: "The Eritreans who lives in the area of Asmara where Mr Berket uncle lives confirmed them that Mr Berket resided in Assab. Once they have confirmed about this issue they have returned to our office to inform us that Mr Berket is an Eritrean national".
36. The letter then explains how people in Eritrea "live in socially encapsulated kind of community and most people know each other and that is how the elders managed to confirm about Mr Berket background and family history that easily".
37. The letter also said that he answered appropriately questions about Eritrean tradition and cultural values and had a satisfactory knowledge of Eritrean geography. The letter explains that there are additional foods shared by the Eritrean and Ethiopian Communities but there are also foods exclusively known to Eritreans and, although the letter is not actually clear, the implication is that he gave satisfactory answers indicating he was Eritrean.
38. I have considered the submissions made by both parties orally and the skeleton argument by the appellant.
39. This is a very difficult case. The appellant was not an impressive witness but did answer the questions asked.
40. It is perhaps more help to look at the expert evidence. Dr Birchall's evidence is problematic for the Secretary of State. As I read it, although he clearly has reservations, he takes the view that the documents are probably genuinely issued by the Eritrean authorities. I must give them weight. This is not a case where I am told that such documents are readily available by corrupt practices. I regard them as a pointer but no more than a pointer to the appellant having family in Eritrea just as he claims and that I regard it as probable that if his parents were Eritrean, he has Eritrean nationality.
41. The expert report from the elders troubles me. I would like to have heard the writer give evidence although probably that would only have just opened up new avenues of hearsay because it is quite plain a lot of people are involved in that. The basic methodology seems to be that enquiries were made from somebody who might know somebody and eventually somebody was found who could confirm that the appellant did indeed have an uncle in Assab just as he said. That is either rank dishonesty or compelling evidence supporting but not proving the appellant's case. I find it likely that the Eritrean Community would take some care in preparing their documentation and would not want to be involved in lying to the Tribunal. I find I must give weight to that document and must accept therefore that the appellant has an uncle in Eritrea just as he says.

42. I noted his knowledge about Eritrea but that does not help very much. On his own case he has not spent a great deal of time in that country although he has had cultural links. Again, it is far from conclusive but it nudges in favour of believing this core part of his claim. I accept that he has been to the Ethiopian Embassy with his friend as they have said but that does not help very much. It is unsurprising that the appellant was required to produce documents and he says he does not have any and has no incentive really to co-operate and produce that evidence. It is not something that helps at all.
43. The evidence from the church concerns me very much. A pastor of the church should not be writing a letter saying how he knows the appellant and then a later letter saying how he has not been able to get to know him. The pastor does not indicate anything about his education and experience but I find it frankly disappointing that a person who identifies as a leader of a Christian community would be so careless in the evidence he gives to the Tribunal. I cannot attach much weight to it. I find it likely that the appellant has some contact with the church. Indeed, I note that his partner claims to have met him at church but I find it unlikely that his involvement is more than occasional attendance at church. Certainly he has not made much of an impression on the pastor. I have seen nothing that indicates to me that the appellant has strong religious beliefs or that he would have conducted himself in Eritrea in a way that would expose him to the risk of persecution.
44. Pentecostal Christians in Eritrea generally are at risk of persecution and there are very credible stories of horrible ill-treatment being subjected to Pentecostal Christians. I recognise that a person does not have to be a leader to annoy the authorities but I have seen no independent evidence that the appellant was involved in Pentecostal Christianity in Eritrea and I have seen nothing to indicate he has a strong commitment now. I am not persuaded that he would want to identify with Pentecostal Christians in Eritrea and there is no real risk of his being persecuted for that reason.
45. There is no other reason advanced. He may, that is not a matter for me to investigate, now have a good case to remain on human rights grounds but he has not shown me that he is at risk of ill-treatment and I dismiss this appeal.

Notice of Decision

46. This appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 June 2024