



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004702

First-tier Tribunal Nos: PA/51433/2021
IA/06535/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 31st May 2024**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**KK
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms U Dirike, Counsel instructed by Turpin Miller Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 6 December 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 against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent refusing him international protection. The same appeal was allowed on human rights grounds under Article 8 of the European Convention on Human Rights because of the appellant's relationship with his child. That decision was not the subject of any challenge and stands regardless of the outcome of these proceedings.

2. I regret the delay in promulgating this decision. Dictation was sent for typing on 7 December 2023. The typist's records show that a draft was sent to the Judge on 8 December 2023 but there is no copy of it in the Judge's e-mail folder.
3. The appellant's nationality is disputed. In very simple terms, the appellant claims to be a Pentecostal Christian from Eritrea who needs protection but the respondent does not believe he is from Eritrea. The respondent finds that he is Ethiopian and does not need protection.
4. The appellant has previously claimed asylum unsuccessfully on the same basis but relied on new evidence in this case.
5. The First-tier Tribunal's decision has to be read carefully. It is short but there is nothing inherently wrong in a decision being short but it must show proper appreciation of the appellant's case and it is his case before me that it does not.
6. The judge's Decision and Reasons shows that the appellant gave evidence using an Amharic interpreter.
7. The judge outlined the earlier claim and the reasons for it being disbelieved. These included inconsistencies in his evidence and also his claim to speak Amharic fluently (that was his language of choice for the hearing) and a little Tigrinya. At the hearing of the first appeal the judge decided the country evidence showed that it was not likely that the appellant is Eritrean but unable to speak Tigrinya fully.
8. In the instant appeal the judge found the appellant gave an inconsistent account of how he obtained a birth certificate, purportedly issued by the registrar in Eritrea. He provides persuasive evidence about how it came into his possession. The judge found that the appellant had changed his story and said at paragraph 8:

"I find the Appellant would not have stated he did not directly communicate with his uncle if he had spoken with him."
9. He then gave an explanation for not being able to provide details of a Facebook account.
10. The judge did not find it credible that the appellant could not have done more to find or explain the origins of his birth certificate. In any event, the birth certificate was issued in 2019 and the appellant is clearly a mature man.
11. Some explanation for the difficulties in this account came from the medical report prepared by a clinical psychologist. The expert report showed that the appellant presented with a condition that "satisfied the criteria for diagnosis with major depressive disorder of moderate severity, moderate anxiety and post traumatic stress disorder" and the judge ruled out the possibility of the answers being feigning or misreported. The point is that such evidence could go some way to explaining that a person should not be expected to give a cogent history. This does not mean that he had to be believed but it does devalue the relevance of apparent dishonesty in his account. The judge says at paragraph 10:

"The expert accepts without question the account provided by the Appellant and I place weight upon the report without the full GP and medical records."
12. The judge then said at paragraph 11 that she was referred to an expert report regarding the appellant's linguistic abilities. The judge noted that it is the respondent's case that the appellant does not speak Tigrinya and "this is determinative" but, the judge noted, the expert concludes that, given the appellant only spent his early years in Eritrea and then moved to live in a

community in Sudan where Amharic is spoken, the fact that he speaks Amharic and little Tigrinya is to be expected and is not determinative of nationality.

13. The judge noted that she was invited:

“to conclude that given the visit to the Ethiopian Embassy, the placement with Eritrean hosts, the relationship with the mother of Y all suggests that the Appellant is from Eritrea, however, I conclude that association with people from a country is also not determinative of nationality, but I have considered all of these factors in the round.”
14. The judge then went on to find that, looking at the evidence in the round, the appellant had not shown that he was from Eritrea with the new evidence provided.
15. There are two problems with this approach set out in the grounds of appeal. The grounds of appeal set out paragraphs 74 and 75 of the expert report. I produce them below because they make the point that the appellant relies upon. The psychologist said:

“74. Objective determination of [K’s] credibility falls outside my remit and field of expertise. I was therefore careful to consider the possibility that [K] might be feigning or exaggerating his symptoms and followed guidance offered by authors such as Rogers (1997) and Easton (2012) to assess this. In my clinical opinion he was not. On the contrary, my clinical impression was that he is in a state of distress in keeping with his given history.

75. It is a common misperception that it is easy to fabricate psychiatric disorder. It is actually, extremely difficult to do so across time and symptom clusters with consistency of affect. [K’s] presentation in terms both of his behaviour and of his mental state when I assessed it, is in keeping with him having a ‘real’ major depressive illness.

76. I do consider [K] to be credible psychiatrically. His self-reported symptoms and personal history, given in this interview, were consistently matched by his affect throughout the consultation. As described above, he was clearly and objectively low in mood from the outset of this interview and throughout.”
16. I do not understand how the judge was able to say that:

“The expert accepts without question the account provided by the Appellant and I place less weight upon the report without the full GP and medical records.”
17. Of course, the psychologist did not know how the appellant travelled to the United Kingdom or what he experienced in his country of nationality, wherever that might be. The psychologist is able to, and did, offer an informed clinical opinion that the man is ill. I see no proper basis for rejecting the conclusions of the expert, notwithstanding that other evidence was not considered such as, other medical reports.
18. It is important to consider from the report the consequences of the diagnosis. At paragraph 80 the psychologist, having clearly accepted the appellant’s description of poor concentration said:

“This may impact his capacity to recall or omit certain aspects of his experience.”
19. At paragraph 81 the psychologist addressed her mind to inconsistencies in the appellant’s account and said:

“It is my view that these inconsistencies can be explained by his psychiatric symptoms e.g. depression and post-traumatic avoidance.”

20. The psychologist then looked for other factors that might explain the symptoms but concluded that the experiences that he described rather than the (understandable and real) worry about his present circumstances were the best explanation given.
21. At paragraph 94 the psychologist said:

“As such, individuals like [K] may sometimes be quite confused and can provide conflicting accounts of events, especially when placed under pressure.”
22. I am satisfied that the judge did not clearly and adequately show in her reasoning that the judge appreciated how difficulties in the appellant’s evidence could be the result of his being unwell and the judge did not give proper reasons, given the report, for rejecting the psychologist’s contention that the appellant is unwell.
23. The judge has to make a decision and when the damaging factors, such as inconsistency or confused explanation are explained away or their harmful effect diminished by reason of the appellant being ill, then, arguably, more weight should be given to other strands. That is not what has happened here.
24. The expert report on country conditions appears to be from an appropriately qualified person. It is long without being repetitive and makes many points. Of particular interest is paragraph 28 onwards where the expert addressed the finding that it was not credible that the appellant spoke so little Tigrinya when it was the first language of his parents. The expert explains in some detail how the Ethiopian state made determined efforts to stop the use of non-Amharic languages. It is explained how in public places, such as churches, gatherings plainly spoke a language other than Amharic. They had to do their business in Amharic and provide a translation. The contention that it was somehow inherently unbelievable that a family living in Ethiopia would not speak Amharic in the privacy of their home has to be assessed against this evidence, which indicates strong social pressure to discourage the use of languages other than Amharic.
25. The First-tier Tribunal Judge has clearly referred to the expert report, as I was properly reminded by Ms McKenzie, and I have reflected on that but there is nothing in the Decision and Reasons that satisfies me the judge has engaged with the strand of evidence which, if accepted, (and it is plainly prima facie credible) would go some way to undermining the damage to the appellant’s case by reason of his not speaking Tigrinya.
26. Ms McKenzie recognised the appellant’s case was that the judge had been overly concerned about the unreliability of his evidence about his Eritrean birth certificate, but she insisted the judge had given proper reasons for doubting the evidence about that and had reached a sustainable conclusion. The fact that the appellant produced an unreliable birth certificate (if it is a fact) does nothing to help his claim to be Eritrean but neither does it prove him to be Ethiopian.
27. I remind myself that the judge has referred to the necessary evidence and that I should be reluctant to rush in and assume the judge has got something wrong but there are two strands of evidence here which are very important and I am not satisfied that they have been considered properly.
28. With all respect to Ms McKenzie’s efforts, I find the Decision and Reasons, at the very least is not explained properly. The appellant has not had a proper

determination of his appeal on protection grounds. I set aside the part of the decision that dismisses the appeal and I direct the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 May 2024