Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01982/2013

THE IMMIGRATION ACTS

Heard at Field House	**Date Sent**
On 17 October 2013	**On 22 October 2013**
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Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR S G
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin of counsel instructed by Blavo & Co solicitors
For the Respondent: Mr N Bramble a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims to be a citizen of Eritrea and to have been born on 12 May 1995. He has been given permission to appeal the determination of First-Tier Tribunal Judge Walker (the FTTJ) who dismissed his appeal against the respondent's decision of 18 February 2013 to give directions for his removal from the United Kingdom following the refusal of asylum.

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2. The appellant claimed to have left Eritrea on 16 September 2011 and to have entered the UK illegally on or about 27 June 2012. He claimed asylum on 29 June 2012.

3. The appellant claimed to be a citizen of Eritrea, born in that country and to have been a Pentecostal Christian all his life. He moved to Ethiopia in 1995 when he was about three months old. His mother left in 1998 and he has only seen her once since then. His father worked as a ground technician with Ethiopian Airlines. The appellant said that he did not go to school in Ethiopia.

4. The appellant claimed that after war broke out between Ethiopia and Eritrea in March 2000 he, his father and a cousin were deported to Eritrea after his father had been sacked from his job. They went to live with an aunt in Eritrea and stayed with her between 2000 and 2002. The appellant was injured when his aunt's house caught fire in November 2000.

5. In 2002 the appellant said that his father got a job in Egypt as a ground technician with Gulf Airways. The appellant was allowed to leave Eritrea with his father and go to Egypt. He attended school in Egypt and a Pentecostal church every Sunday. The appellant's father had difficulties with his employers and was dismissed in March 2010. His work permit expired and the appellant returned to Eritrea with his father in June 2010.

6. The appellant said that the Pentecostal religion had been banned in Eritrea in 2002 and that anyone practising Pentecostal Christianity had to do so in secret. He claimed that in September 2011 whilst he and his father and two others were practising their faith soldiers broke into their house ransacked it and confiscated their Bibles. They were accused of practising a banned religion and taken away. The appellant said that he was detained, beaten and suffered broken teeth. He was interrogated and told to name other followers of the Pentecostal faith. He spotted a police driver he recognised who helped him escape. Later he discovered that a bribe had been paid to secure his release. His aunt said that he had to leave the country and she made the arrangements. He left Eritrea on 16 September 2011, travel to Djibouti and then, with the assistance of agents, was brought to the UK.

7. The appellant claimed to have a well founded fear of persecution in Eritrea because of his religious faith as a Pentecostal Christian. He feared that if he returned he would, as had already happened, be arrested and seriously ill treated. He also feared being punished as a draft evader or somebody who had left the country illegally. He could face an indefinite term of imprisonment.

8. The appellant said that his main language was Amharic because he was raised in Ethiopia. When he was in Egypt teaching was in English and he socialised with non-Arabic speaking people.

9. The respondent accepted the appellant's claimed date of birth. On 16 August 2012 he underwent a language analysis test by Sprakab. The conclusions were that he spoke Amharic but could not speak Tigrinya or Arabic. He could speak Amharic to "native" level and his linguistic background was assessed to be Ethiopian with a very high degree of certainty. It was also assessed to be very likely that his linguistic background was Addis Ababa in Ethiopia. Based on this analysis the respondent did not accept that the appellant was a national of Eritrea or that he had been removed to that country as he claimed. The respondent concluded that the appellant was Ethiopian, could return to that country without difficulty and would be entitled to apply for an Ethiopian passport or travel documents. He would be able to practice his Pentecostal faith in Ethiopia. The respondent considered that the appellant was not a credible witness.

10. The appellant appealed and the FTTJ heard his appeal on 22 July 2013. Both parties were represented, the appellant by Ms Daykin. The FTTJ heard oral evidence from the appellant and a friend who claimed to be a citizen of Eritrea who could confirm his nationality (Mr T). In his determination the FTTJ found that the Sprakab linguistic analysis was correct. He concluded that the appellant was a citizen of Ethiopia not Eritrea. He was not a credible witness. His account of events was not believed. The FTTJ dismissed the appeal on asylum, humanitarian protection and human rights grounds.

11. The appellant applied for and was granted permission to appeal. The grounds submits that the FTTJ erred in law by his erroneous treatment of the expert report from Professor Patrick, failing to take account of the objective evidence that Amharic was spoken in Eritrea and failing to place any weight on the evidence of the appellant's friend.

12. I have a bundle submitted by the appellant’s solicitors which I am told contains documentation which was before the FTTJ and no new material. There are no skeleton arguments and Ms Daykin relied on her grounds.

13. Ms Daykin submitted the judgement of the Extra Division, Inner House, Court of Session in Scotland in MABN and anr v The Advocate General for Scotland [2013] CSIH 68 (12 July 2013). I can find no indication that this judgement was put before the FTTJ although there is mention of it in Professor Patrick's report. The papers already before me include RB (Linguistic evidence Sprakab) Somalia [2010] UKUT 329 (IAC) (15 September 2010) which was before the FTTJ. I cannot find any indication that RB (Somalia) v Secretary of State for the Home Department [2012] EWCA Civ 277 (13 March 2012) was before the FTTJ.

14. In her submissions Ms Daykin submitted that the judge should have placed no weight on the Sprakab report. Only a report from an

expert with the qualifications which Professor Patrick considered necessary could have been given weight and there was no such report. Her instructions were that the appellant’s solicitors had tried to find an expert with the required qualifications, but without success.

15. In reply to my question, Ms Daykin accepted that what was relied on in paragraph 7 of the grounds of appeal did not reflect all that the FTTJ said in his determination about Amharic being spoken in Eritrea. In relation to paragraph 8 of the grounds, referring to paragraph 48 of the determination, Ms Daykin accepted that Mr T did not produce any documentation to show that he had been recognised as a refugee in the UK.

16. I was asked to find that the FTTJ erred in law, set aside his determination and adjourn for it to be remade, preferably in the Upper Tribunal.

17. Mr Bramble submitted that in relation to the Sprakab report it was clear that the FTTJ had given proper consideration to Professor Patrick's report. The judgement of the Court of Session was not binding on the Upper Tribunal although it could be of persuasive effect. Professor Patrick conceded that he did not have any personal knowledge of the languages in question. He submitted that it was open to the FTTJ to reject Professor Patrick's view and rely on the Sprakab report. In his report Professor Patrick incorrectly stated the age span during which the appellant was in an Amharic speaking environment. He said between the ages of three months and seven years whereas the appellant's evidence was inconsistent and the FTTJ concluded that it was between three months and just under five years of age. The FTTJ made a proper assessment of the appellant's claims as to where he had lived and the languages he might have acquired. There was evidence to support the conclusions reached in the Sprakab report.

18. As to the second ground of appeal, Mr Bramble said that whilst this was correct in so far as it went it took no account of the totality of what the FTTJ said.

19. As to the third ground, Mr Bramble argued that the FTTJ gave more reasons for finding the witness not credible which were more than sufficient to support his conclusion. Furthermore, it was for the appellant to prove his case, not for the respondent to disprove it. He argued that there was no error of law and asked me to uphold the determination.

20. In her reply Ms Daykin reiterated that the FTTJ did not sufficiently assessed Professor Patrick's report when accepting and giving weight to the Sprakab report.

21. I reserved my determination.

22. Professor Patrick's qualifications indicate that he has the expertise to express his opinions and it has not been suggested that he does not. The fact that he does not speak any of the languages in question means that whilst he can express opinions on Sprakab's qualifications and methodology he is, as he accepts, in no position to make his own analysis of the appellant's speech. Ms Daykin submitted that the FTTJ should have given no weight to the Sprakab report. Professor Patrick does not go quite so far. In paragraph 7d of his General Conclusions he states "The Sprakab report on (the appellant) should not be accepted in scientific evidence, or if it is, its conclusions should at least be viewed with deep scepticism." Whilst in his report Professor Patrick makes reference to MABN in the Court of Session I can find no indication in the determination, the skeleton argument or elsewhere, that the FTTJ's attention was drawn to this or that he was provided with a copy. In the circumstances I find that the FTTJ did not err by failing to have regard to an authority which was in any event not binding on him, although had it been provided it should have been considered and might have been persuasive.

23. On the other hand RB in the Upper Tribunal was an authority which the FTTJ was required to follow unless he was persuaded that there was evidence clearly indicating that he should take a different view. It is not clear whether the FTTJ was aware that RB had been upheld by the Court of Appeal or if so the basis on which this had been done. The principles laid down by the Upper Tribunal in RB are summarised in the paragraph; "Linguistic analysis reports from Sprakab are entitled to considerable weight. That conclusion derives from the data available to Sprakab and the process it uses. They should not be treated as infallible but evidence opposing them will need to deal with the particular factors identified in the report."

24. I find that the FTTJ did follow RB, the effect of which he summarised in paragraph 35. However, he did not treat the Sprakab report as infallible. Between paragraphs 36 and 39 and in paragraph 42 he addressed Professor Patrick's report. He also took into account the COI objective evidence referred to in paragraph 41. In paragraph 42 he accepted Professor Patrick's opinion but explained why his assessment of the appellant's evidence entitled him to reach a different conclusion. He did not question Professor Patrick's expertise. I find that the FTTJ made a proper summary and analysis of the report before reaching the conclusion, open to him on all the evidence, that the Sprakab linguistic analysis was correct.

25. I find that the FTTJ did not reject the appellant's evidence and find him not credible purely on the basis of the Sprakab report. There are other strong reasons for this conclusion which appear in paragraphs 44 to 48 of the determination. These are either not challenged in the grounds of appeal or, if they are, any challenge is not made out for reasons which follow.

26. The second ground of appeal argues that the judge erred in law by finding, in paragraph 42, that there was no reference to Amharic being spoken in Eritrea when there was a clear indication to the contrary in paragraph 19.04 of the COI report before him. This may be strictly correct but it is nothing to the point because it does not accurately represent the FTTJ's findings. Rather than rejecting the claim that Amharic was spoken in Eritrea in paragraph 42 the FTTJ accepted the evidence of Professor Patrick that Amharic was the official language of Eritrea until independence and that it was spoken by ethnic Eritreans who had lived in Ethiopian before being forced out. This ground does not identify any error of law.

27. The third ground of appeal submits that the judge erred in law by failing to place any weight on the evidence of the witness Mr T. It is argued that the FTTJ did so because the witness produced no evidence linking him to Eritrea or proving that he was an Eritrean citizen apart from his UK provisional driving licence. This ground also fails fully to reflect what the judge said, in this case in paragraph 48. The FTTJ found that Mr T was not a credible witness for more than this reason alone. He had given evidence in Amharic rather than one of the main Eritrean languages. There was no evidence to support his claims that he also spoke Arabic and Tigrinya. He had not produced any evidence linking him with Eritrea or proving that he was an Eritrean citizen. I note that in his witness statement the witness says nothing about his status in this country. It should not have been difficult for him to provide documentation to show his status whether as an asylum claimant, recognised refugee or in some other capacity. This ground does not identify any error of law.

28. I find that the FTTJ did not err in law. I uphold his determination.

29. The FTTJ made an anonymity direction which I repeat.

30. 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 his 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.

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Signed Date 19 October 2013
Upper Tribunal Judge Moulden