



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/10140/2016

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

On 26th April 2017

Determination

Promulgated

On 8th May 2017

Before

**DEPUTY UPPER TRIBUNAL JUDGE
Ms. G A BLACK**

Between

**G S
ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E. Sanders (Counsel instructed by J.D. Spicer & co)

For the Respondent: Mr P. Armstrong (Home Office Presenting Officer)

DECISION AND REASONS

1. I shall refer to the parties as “the appellant” and “the Respondent” who is the Secretary of State. This is an error of law hearing. I consider whether or not there is a material error of law in the decision the First-tier Tribunal (Judge CM Phillips) (“FTT”) promulgated on 30th November 2016 in which

the appellant's application for asylum and humanitarian protection was dismissed.

Background

2. The appellant claimed to be a citizen of Eritrea and her nationality was the main issue to be determined on appeal. The appellant also claimed that she was a Pentecostal Christian and she feared persecution on religious grounds. The respondent did not accept that she was from Eritrea, nor that she was a Pentecostal Christian, nor that she had left Eritrea illegally. It was the appellant's claim that she was born in Eritrea and then went to Ethiopia and grew up speaking Amharic, although she could understand Tigrinya which her parents spoke. She returned to Eritrea with her father when she was of school age for a period of two years from the age of 9 years old. Military service was a relevant consideration on return.

Adjournment application at FTT

3. At the hearing the appellant's representative requested an adjournment in order to obtain expert evidence on nationality and rights of residence, and for the appellant and/or her solicitors to make further attempts to contact the Ethiopian Embassy to establish her nationality. Counsel argued that the appeal hearing on 26th October had been listed quickly. It was on 15th September that the appellant received the refusal letter informing her that nationality was in dispute. It was important that the appellant had the opportunity to show that she had taken reasonable steps to obtain an Ethiopian passport [9]. The respondent opposed the application citing **MA (Ethiopia) [2009] Civ 289** [10].
4. In refusing the application the FTT found that the grounds were "too vague" and it was not clear what evidence could be provided by the Ethiopian Embassy when it was the appellant's position that she was Eritrean. Credibility issues were raised in the refusal and "the reasons for the adjournment did not address those issues" [11].

FTT findings and decision

5. The FTT accepted that the determinative issue in the appeal was the appellant's nationality and that if she were Eritrean then she would be entitled to a grant of refugee status [38] because on return she would be eligible for military service [60]. The FTT emphasised that as the issue was narrowly focused the evidence would be carefully considered and the utmost scrutiny applied. The FTT found that the appellant was not an Eritrean national. The FTT found that the account given was not credible. The appellant's timeline evidence was unconvincing and inconsistent [45-47][50]. The appellant's explanation for speaking Amharic and minimal Tigrinya was lacking in credibility [46-50]. The appellant's lack of knowledge about Eritrea was further cause for finding her lacking in

credibility. The FTT found that she was not a Pentecostal Christian [52-56]. The FTT considered the appellant's account of attending the Ethiopian Embassy and found it lacking in credibility. The FTT did not find it credible that the Head of Consular would have a business card showing a private yahoo email address. The FTT disbelieved her account that she had requested a passport without making an appointment or producing any documentary evidence [58]. The FTT found that "the appellant has not shown with sufficient, satisfactory evidence that she made a proper application to the Ethiopian Embassy for a passport and this was refused for any other reason other than her statement that she is Eritrean, born in Eritrea with no independent or documentary evidence originating from Ethiopia" [59]. The FTT found that her attempts to obtain a passport which had not involved making an appointment were not bona fides and the denial of a passport did not assist in her establishing her Eritrean nationality.

Grounds of application for permission to appeal

6. The appellant relied on two grounds of appeal. The first ground was that the FTT unfairly refused the application for an adjournment in the light of the lack of time for preparation of the appeal, clear reasons for an adjournment were given, the FTT having refused the application then went on to find the appellant's account of attendance at the Embassy was not sufficiently credible or a bona fides attempt to do so.
7. The second ground argued was that the FTT's assessment of credibility was flawed. The FTT failed to take into account the appellant's young age at the time of material events and the interpretation issues raised by the appellant, in making negative findings as to material issues.

Permission to appeal

8. Permission was granted on renewal by UTJ McWilliam who found it arguable that the FTT gave inadequate reasons for refusing the adjournment, and which could amount to procedural unfairness. The evidence sought by the appellant in respect of nationality was directly relevant to credibility.

Rule 24 response

9. The respondent opposed the appeal. The grounds challenging the FTT's reasoning and amount to disagreements. The FTT gave perfectly sustainable reasons for refusing the adjournment and no good reason why further enquiries were necessary was given. A request for an expert ought to have been made at an earlier stage.

Submissions

10. Ms Sanders argued all of the grounds but her primary submission was the refusal to adjourn which fed into the findings made by the FTT. In cases of disputed nationality it was recognised that an applicant, on whom the burden falls, would seek to establish Ethiopian nationality or acquire a right to it and this involved potentially complex facts and circumstances to be considered. The request for an adjournment was clearly made and the

steps proposed to be taken were set out in terms of a further visit and /or contact with the Embassy by legal representatives. Counsel addressed the FTT as to the need for an expert on the issue of nationality and possible corrupt practices at the Embassy. The refusal was further compounded by the FTT's rejection of the appellant's account of having attended the Embassy as unsatisfactory. The nationality issue was central to the appeal.

11. The FTT did not specifically consider the question of the appellant's age. The FTT failed to take into account the appellant's explanation about mistranslation. In essence the FTT erred by deciding the credibility issues first and thereafter going on the deal with nationality.
12. Mr Armstrong argued that the appellant had ample time in which to obtain further evidence including an expert. The FTT's approach to the account of attendance at the Embassy and the finding as to the business card, was perfectly reasonable. The FTT had given valid multiple reasons for not accepting the credibility of the appellant's evidence and was entitled to do so given the discrepancies and inconsistencies.

Discussion and conclusion

13. I find that there was a material error in law leading to procedural unfairness arising from the refusal of an adjournment and the inadequacy of the reasons given in support. The FTT rejected the application because the reasons given were "too vague". Yet it is clear that the adjournment was sought in order to instruct an expert on nationality to look at the facts and circumstances relating to Eritrean or Ethiopian nationality and to obtain further evidence from the Ethiopian Embassy. This is entirely consistent with the guidance in **ST (Ethnic Eritrean- nationality-return) Ethiopia CG [2011] UKUT 00252 (IAC)** (see headnote (4-6)). For such an application to be made in advance of the hearing would have been appropriate and desirable but reference was made to the shortness of time in which to prepare for the appeal. Furthermore the FTT reasoned that the refusal letter set out credibility issues which were not addressed by the reasons given for the adjournment. Clearly this is not the case at all; the FTT emphasised the need for utmost care and scrutiny given that the main credibility issue under appeal was the appellant's nationality. The reasons for finding her lacking in credibility as to her nationality were set out in the reasons for refusal and thus central to the appeal. The respondent specifically raised the issue of re establishing Ethiopian residency at paragraph 27 of the refusal letter.
14. I take the view that the refusal of an adjournment then infected the FTT 's findings particularly as to the account given of and the significance of the contact with the Embassy and which was relevant to the issue of nationality. Both were matters which could properly have been addressed by an expert.

Decision

15. There is a material error of law in the decision which shall be set aside. The matter is remitted for re hearing at Taylor House (excluding Judge CM Phillips).

Signed

Date 4.5.2017

GA Black

Deputy Judge of the Upper Tribunal

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 their 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.

NO FEE AWARD

Signed

Date 4.5.2017

GA Black

Deputy Judge of the Upper Tribunal