Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03092/2013

THE IMMIGRATION ACTS

Heard at North Shields
On 10 July 2013

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE DEANS

Between

MR ABELE BEYENI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk of Counsel
For the Respondent: Mr P Mangion, Home Office Presenting Officer

DETERMINATION AND REASONS

1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal Williams dismissing the appeal on asylum and human rights grounds.

2) According to the appellant he is an Eritrean national, born in Assab on 21 May 1987. The appellant fears persecution by the Eritrean government owing to his faith as a Pentecostal Christian, into which he was baptised on 7 January 2007.

3) The appellant's account of his early life was that after having been born in Eritrean in 1990 he moved to Ethiopia. In 1999, owing to the conflict between Eritrea and Ethiopia, he was deported to Eritrea where he lived with his aunt in Assab. He did not

attend school. In 2001 the appellant and his father left Eritrea legally in order for his father to work as a chef in Sudan. In 2006 the appellant's father became ill and was paralysed down his left side. In October 2005 the appellant and his father returned legally to Eritrea.

4) With a week of his return the appellant held three prayer meeting for his father at his paternal aunt's house. During the third meeting the house was raided by the authorities. The appellant was knocked unconscious and detained along with 3 others. The appellant awoke some 10 days later in hospital where he remained for a month before he escaped. His escape was arranged by his uncle, who bribed a guard. The appellant fled from Eritrea and travelled via Greece, Italy and France to the UK.

5) An additional aspect of the appellant's claim is that he has been denied Ethiopian citizenship and this constitutes persecution by the Ethiopian authorities.

6) The Judge of the First-tier Tribunal accepted that the appellant is a Pentecostal Christian. The judge recorded that the appellant has an overall grasp of Christian doctrine, as shown at his asylum interview. He gave a broad overall account of parts of the Bible such as the Books of Job, Isaiah and Esther. While this knowledge was not deep, having regard to the low standard of proof and the fact that the appellant has attended church in the UK, the judge found in his favour. The judge further found that the appellant's claim to have been deported from Ethiopia to Eritrea in December 1999 was in accordance with the country information. According to a COIS report of January 2008, relations between Ethiopia and Eritrea deteriorated in late 1997 and there was fighting between them from May 1998. A bitter war was fought from 1998 to 2000. Eventually the Eritrean Government withdrew its troops from all disputed areas and a cessation of hostilities was agreed in Algiers. The agreement which brought an end to the conflict included a return to the pre-May 1998 border positions. During the war Ethiopia expelled 70,000 Eritreans living in the country and Eritrea subsequently expelled a similar number of Ethiopians.

7) The judge noted that the appellant was able to give accurate evidence in relation to some aspects of the geography of Eritrea, for example, roads and landmarks in the district of Assab. Notwithstanding this, the judge was not satisfied that the appellant was Eritrean.

8) The judge found that it was not reasonably likely that the appellant would have been able to leave Eritrea legally in 2001 with his father, when his father was approximately 44 years of age. There was no explanation as to why his father was able to leave legally and was not subject to military service. According to the COIS report, men aged 18-54 were required to provide 18 months of military and non-military public works and services. Some national service conscripts were required to continue their service indefinitely, with many required to serve in their positions for over ten years. National service conscripts could not resign from their jobs or take new employment and could not leave the country, as those under national service were often denied passports or exit visas. Although the war with Ethiopia ended in 2000, in May 2002 the government

introduced a proclamation indefinitely extending national service. In effect it meant the forced conscription of every adult male up to the age of 50, although some refugees claimed 55 was the upper limit and other sources claimed the upper limit was 57 for men and 47 for women. Reference was made to a letter dated 1 April 2010 from British Embassy in Asmara stating that Eritreans were forcefully brought into military/national service as a result of round-ups or house searches. A Human Rights Watch report of 2011 stated that in practice national service is routinely prolonged indefinitely. Having regard to the country information the judge was satisfied that if the appellant's father did not volunteer or attend for service he would have been rounded up. The judge also considered that there were no exemptions for those in the position of the appellant's father as a healthy man. There were penalties for evasion both towards the evader and their family. The fact that the appellant's family remained unscathed continuing to live and trade in Asmara after the appellant left and the fact that the appellant and his father were able to re-enter Eritrea legally in October 2005 without arrest was not credible.

9) The judge did not consider it reasonably likely that the appellant and his father would have freely chosen to return to Eritrea from Sudan. The appellant was able to worship in Sudan but if the family was intent on travelling they could alternatively have travelled to Ethiopia. The persecution by Eritrea of Pentecostal Christians made it all the more incredible that the appellant's father would have chosen to return to Eritrea. As a paralysed man it was not credible that he would choose to make the long arduous journey right across Eritrea to Assab where, according to the country information, there was no guarantee of health care. The appellant's father would not have chosen to return to Eritrea when the appellant was 18 and he was about 46 as they would both have been eligible for military service with its consequent dangers.

10) Notwithstanding that the appellant had some geographical and historical knowledge of Eritrea the judge was not satisfied that he was an Eritrean national. The appellant is a speaker of Amharic with little or no knowledge of Tigrinya. The appellant also has some knowledge of Arabic. The judge records that, according to the country information, Amharic is the national language of Ethiopia and the working language of the federal government, although there is equal recognition for all Ethiopian languages. Tigrinya is spoken in Ethiopia and in neighbouring Eritrea. About 4 million people in Ethiopia speak it, mainly in the northern most province of Tigray. The language of Tigrinya is one of the major language groups in Eritrea, although English is rapidly becoming the language of business and the medium of instruction at secondary schools and university. Arabic is also widely spoken.

11) The judge noted that, according to the appellant, his father was a Tigrinya speaker, who favoured Eritrean independence and raised him, with the help of an Amharic speaking maid, in Eritrea for the first three years of his life. The family had close ties with Eritrea and the appellant spent another two years there. The family were Christians. According to the country information the Orthodox Christians in Eritrea are Tigrinya speakers. The judge considered that if the appellant's account of his background was true, it was reasonably likely that he would be able to do more than

merely communicate greetings in Tigrinya but would have a close association with the Tigrinya language. The judge noted that the appellant attributed his knowledge of Arabic to his time in Sudan. His ability to speak some English showed that the had the aptitude to pick up languages and thus would have had the ability to learn Tigrinya notwithstanding his relative lack of schooling.

12) The judge did not accept that the appellant was arrested in Eritrea and managed to escape. The judge noted that according to the country information a brutal campaign has been waged in Eritrea against Christian minorities, focussing mainly on the evangelical and Pentecostal movements. Prayer meetings have been raided by the security forces and congregation members or guests have been rounded up and detained *en masse*. Some Christians who have been detained have been reportedly transferred to a military facility and were severely mistreated. Many of those jailed for their religious affiliation were held in harsh conditions and denied medical treatment. According to the judge it was not credible that the appellant would have received good hospital care as a Pentecostal Christian and a draft evader. It was not credible that his paternal aunt and father were not arrested at the same time particularly as, according to the appellant, his father had intervened "furiously". According to the appellant's evidence at the hearing his uncle told him that he was to escape from the hospital only 10 minutes prior to the appellant going to the window. However, at his asylum interview the appellant had said that he had two days notice of the escape plan. This was a fundamental discrepancy which undermined the appellant's credibility.

13) The judge did not consider it reasonably likely that the appellant was arbitrarily denied Ethiopian citizenship. The judge noted that the appellant had been to the Ethiopian Embassy and his application had been endorsed with the following comments:

> "The applicant has not attached supporting documents with his application for an Ethiopian passport. Therefore, there is no valid reason for the Embassy to issue him with an Ethiopian passport."

14) The judge considered that the appellant's credibility had been undermined to the extent that he could not be satisfied that the appellant was telling the truth regarding the circumstances of his life. Accordingly, his account of his claimed lack of documentation and/or contacts in Ethiopia was not credible.

Grounds

15) The principal ground upon which permission to appeal was granted was the finding by the judge that the appellant could "provide no explanation" as to why his father was not forced to undergo military service. The appellant's oral evidence was that his father had health problems, including hypertension, depression and one leg shorter than the other. In the application for permission to appeal it was pointed out that the appellant's father was unlikely to be conscripted on return to Eritrea in October 2005 because of his ill-health. The judge was said to have ignored the ties of the appellant and his father to Eritrea. A person might return to a country where they were not treated particularly well because of their family or roots there. The judge ought to

have considered whether the claim that they had returned to Eritrea was reasonably likely to be true and not found it more likely that the appellant and his father would not have returned to Eritrea.

16) The grounds further state that while the appellant had a poor knowledge of Tigrinya, the judge failed to take into account that Assab, where the appellant lived in Eritrea, was a town predominantly populated by Ethiopians. It was explicable therefore that he lacked knowledge of the Tigrinya language. Ethiopians made up approximately 60% of the population. In relation to the appellant's alleged escape from detention in Eritrea, the appalling treatment of Pentecostal Christians in Eritrea did not mean that the account given by the appellant was not reasonably likely to be true. The appellant explained that his father might not have been arrested because of his illness and his aunt was not arrested because she was elderly. Finally, it is pointed out that the appellant attended the Ethiopian Embassy and was denied recognition as an Ethiopian citizen. The judge rejected the appellant's account of the denial of Ethiopian citizenship, the basis of his overall assessment of the appellant's credibility and had failed to consider all the evidence in the round.

Submissions

17) At the hearing before me Mr Schwenk relied upon the grounds in the application. He submitted that the appellant had provided an explanation for his father's avoidance of military service. A judge was entitled to reject an explanation for good reason but not to ignore the evidence, which was what the judge had done. The appellant's father had a number of health problems.

18) Mr Schwenk continued that the judge had given two reasons why it was not credible for the appellant and his father to have travelled from Sudan to Eritrea in 2005. These were that the appellant and his father could worship freely in Sudan and that there was a risk of being drafted for military service on return. This was subject to the same defect in reasoning as mentioned previously in respect of the appellant's father's ill-health. By 2005 the appellant's father was paralysed. The judge ignored the family ties the appellant had with Eritrea. The judge asked the wrong question. The question was not whether the judge would have done this in the appellant's position but whether the appellant's account was reasonably likely to be true.

19) The question was raised of the appellant's own eligibility for military service by the time of the return in 2005. Mr Schwenk suggested that the appellant would have been caring for his father but it was pointed out that according to the country information there was no exemption from military service for a carer. This was recorded in the letter of 11 October 2010 from the British Embassy quoted at paragraph 29 of the determination. Mr Schwenk acknowledged that this might be correct as a statement of normal practice but the appellant's father had significant care needs and someone had to meet these.

20) Mr Schwenk then turned to the issue of language. The judge found the appellant had a poor knowledge of Tigrinya. The judge did not take proper account of the town of

Assab being predominantly Ethiopian, although Mr Schwenk acknowledged that this was before the war. The judge considered that the appellant's account of his arrest and escape was inconsistent with the background evidence about the mistreatment of Pentecostal Christians in Eritrea. This was not a proper reason for finding that the appellant's account of his escape lacked credibility. The appellant had explained why his aunt and father were not arrested. If the appellant's evidence of this was rejected then reasons needed to be given.

21) On the issue of citizenship, the appellant had applied for Ethiopian citizenship in London and been rebuffed. This issue was addressed in the determination after the judge had already decided to reject the appellant's account. The judge had not considered all the evidence in the round.

22) Mr Schwenk continued that the question was whether the issues identified where the judge's reasoning was inadequate were central to the adverse credibility findings. He submitted that they were and that, in particular, the judge failed to take proper account of the appellant's father's ill-health. This went to the core of the account. The credibility findings were unsafe and there should be a further hearing before the First-tier Tribunal at which the decision would be re-made.

23) Mr Mangion, for the respondent, submitted that the core issue was the judge's description of the appellant's father as a healthy man. The judge used the word "healthy" not because the judge was unaware of the evidence. After the Presenting Officer had asked the appellant in cross-examination why his father did not do military service, the judge asked the appellant if there were any other reasons why the appellant's father would not have had to do military service. The appellant replied that his father had depression. The judge considered the exemptions for military service at paragraph 29 of the determination. According to the appellant's evidence his father's hypertension was not diagnosed until after he was in Sudan. This may have been in the mind of the judge. Military service need not be performed in a combat role but could be done in another capacity. Nevertheless the appellant's father was allowed to go to Sudan to work. The appellant mentioned in his witness statement that his father had one leg shorter than the other but the findings made were open to the judge. The judge was entitled to rely on the country information in the way that he had and by the use of italics the judge had made it clear on what parts of the country information reliance was being placed.

24) On the question of return from Sudan to Eritrea, Mr Mangion submitted that the appellant had not said in his witness statement that it was necessary for his father to return to receive care which was not available in the Sudan or because they were missing their family. When the appellant and his father left in Eritrea in 2001 they would have been well aware that it would be difficult for them to return. The appellant's evidence was that his father had been supplied with medication but he made no mention of specialist care. At interview he had said that his father was relying on the healing power of prayer. At the time of the alleged return the appellant would have been about eighteen and would have qualified for military service.

25) In relation to language, Mr Mangion submitted that according to the appellant his father spoke Tigrinya and it was not credible that his father would not have used this language in the home. Many Eritreans had moved to Ethiopia around the time when the appellant said his family had done so when he was aged three. The appellant's first language was Amharic and his second was Arabic. The appellant claimed to have lived for five years in total in Eritrea - the second period was from 1999 to 2001. The appellant's aunt had never left Eritrea. The appellant recorded in his witness statement that his father and his nanny spoke only Amharic to him but it was implicit in the determination that the judge did not believe this.

26) Mr Mangion continued that the judge gave good reasons for not believing the appellant's account of his escape from detention and engaged with the appellant's evidence. The appellant had never stated that his father was not arrested because of his infirmity. The appellant did not know what the reason was.

27) In relation to the appellant's citizenship, Mr Mangion submitted that this was not an "add-on" by the judge. The judge was not obliged to accept the appellant's account of going to the Ethiopian Embassy.

28) In response Mr Schwenk reiterated that the judge did not properly consider the question of the rejection of the appellant's application for Ethiopian citizenship. Mr Schwenk accepted that having regard to the country information the appellant's father's health in 2001 seemed a little bit unlikely to have been such as to have led to an exemption from military service on the grounds of depression. There was the question, however, of differences in culture and meaning. There was an exemption for those registered as disabled but the appellant had not said in terms that his father was registered as disabled. Nevertheless the appellant was very young at the time and did not seek to "over-egg the pudding" by providing an explanation for matters he was not sure about. Even in Eritrea it was possible the appellant's father was registered disabled because of the health problems described.

29) Mr Schwenk continued that the appellant's description of his father's later care needs were that these were less pressing than his need to pray. This did not mean that he was not seriously ill and that he did not have significant care needs. The appellant described how he had to carry his father to the toilet and help him to walk. He had to make his bed and wash him.

30) On the question of language, Mr Schwenk submitted that the appellant's evidence in his witness statement was that his father did not speak to him in Tigrinya. If the judge rejected that explanation he was required to say why.

31) The judge recorded the country information that some elderly people and Christian women were arrested but it did not follow from this that the appellant's aunt and father were arrested. It was not sufficient simply to go through the country information by way of rejecting the appellant's evidence. The question was whether

the appellant's evidence was reasonably likely to be true. The fact that some elderly Christians were arrested did not mean that the appellant's aunt would have been arrested. The behaviour of the authorities on one occasion did not lead to the conclusion that their failure to behave in the same way on a future occasion meant that the appellant was lying.

Discussion

32) As Mr Mangion submitted, the core issue before me is whether the judge erred by disregarding the appellant's evidence of his father's ill-health at the time of leaving Eritrea in 2001. If his father's health was so poor that it would have made him unfit for military service, then that would have explained why the appellant and his father were allowed to leave and this would not have contradicted the country information in the way the judge perceived.

33) In the course of the hearing Mr Schwenk himself acknowledged that it seemed a little unlikely that depression by itself would have led the Ethiopian authorities to give the appellant's father exemption from military service. Mr Mangion submitted that according to the appellant's evidence at his asylum interview (Q69) his father was not diagnosed with hypertension until after he was in Sudan. This hypertension would hardly then have been a justification for exemption from military service before the appellant and his father let Eritrea. The remaining health issue was the appellant's claim that his father had one leg shorter than the other. In relation to this Mr Mangion pointed out that military service did not necessarily mean service in combat or among front line troops. There were other forms of national service. The appellant acknowledges that his father worked as a chef in Sudan. It might be inferred that if the appellant's father was capable of working as a chef in Sudan, then he would have been capable of doing work of this nature in military or national service. If the appellant's father was capable of working as a chef in Sudan there seems little, if any, reason why he would have been regarded as unfit for military service or national service in Eritrea. I am satisfied the judge was entitled to draw the inference he did regarding the implausibility, when considered by reference to the country information, of the appellant and his father being permitted to leave Eritrea legally in 2001 to travel to Sudan in order for his father to work there. This was the most significant of the issues raised in the application for permission to appeal.

34) Mr Schwenk submitted that the judge had asked himself the wrong question over the credibility of the appellant's account of returning to Eritrea in 2005. Mr Schwenk submitted that the question was not whether the judge would have done this in the appellant's position but whether it was reasonably likely that the appellant's account was true. Some of the further points made by Mr Schwenk in this regard were little more than conjecture, such as whether the appellant and his father would have wanted to be re-united with their family in Eritrea because of the appellant's father's poor state of health. A more significant factor was raised by Mr Mangion, namely that the appellant himself had become eligible for military service and he would face potentially a grave situation on return by reason both of being called up for military service and by reason of his religious faith. The judge pointed out that the family

could have travelled to Ethiopia, where their religious affiliation would have been tolerated. The judge was entitled to find that the alleged return to Eritrea was highly implausible and the judge gave adequate reasons for not accepting the appellant's account of the return.

35) It was submitted on behalf of the appellant that the area of Eritrea where he lived until the age of three was at that time a predominantly Ethiopian area. Nevertheless, the appellant's evidence was that his father was a speaker of Tigrinya. Even although the appellant claimed that he was cared for by a maid who spoke Amharic, the judge was entitled to find that was implausible that the appellant did not have a better knowledge of Tigrinya. The judge was entitled to find the appellant's evidence on this issue was not satisfactory.

36) The judge found the account given by the appellant of his arrest and escape in Eritrea was inconsistent with the country information. This was a finding the judge was entitled to make. There was not merely one inconsistency in the appellant's account, such as whether the authorities would have arrested his elderly aunt or his disabled father, but there were other inconsistencies, for instance, over the hospital treatment afforded to the appellant and over when he learnt of the escape plan. The judge was entitled to regard the appellant's evidence as lacking in credibility.

37) In relation to the alleged refusal of Ethiopian citizenship, the judge noted that according to the Ethiopian Embassy the appellant did not attach supporting documents with his application and therefore did not provide a valid reason for the Embassy to issue him with a passport. This is not at all the same of saying that he was not entitled, after detailed examination of his circumstances, to Ethiopian nationality.

38) In conclusion, I am satisfied that the reasoning given by the judge for the adverse credibility finding made was adequate and took proper account not only of the country information but also of the appellant's own evidence. I am not satisfied that there is an error of law in the determination on the basis of which it should be set aside.

Conclusions

39) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

40) I do not set aside the decision.

Anonymity

41) The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum & Immigration Tribunal (Procedure) Rules 2005.

Signed Date
Judge of the Upper Tribunal