Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01075/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 18 November 2014	**On 5 December 2014**

Before

Deputy Upper Tribunal Judge Pickup

Between

Dawit Solomon
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr J Holt, instructed by Blavo & Co Solicitors
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Dawit Solomon, date of birth 1.6.88, claims to be a citizen of Eritrea.

2. This is his appeal against the determination of First-tier Tribunal Judge Simpson, promulgated 26.6.14 dismissing his appeal against the decisions of the respondent, dated 31.1.14 to refuse his asylum, humanitarian protection and human rights claims, and on 4.2.14 to remove him from the UK. The Judge heard the appeal on 2.5.14.

3. First-tier Tribunal Judge Osborne granted permission to appeal on 21.7.14.

4. Thus the matter came before me on 18.11.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Simpson should be set aside.

6. The grounds assert that the judge erred in making a finding of credibility in relation to the appellant's behaviour in challenging removal under the Dublin II Convention. The appellant brought a legitimate judicial review to stop removal. The judge was not in a position to make a finding on this as the appellant had sought legal advice in challenging removal. It is asserted that the judge failed to give proper consideration to the appellant's application to the Ethiopian Embassy. It is claimed that the judge's consideration of this issue is fundamentally flawed. The attendance at the embassy and the letter submitted with the written refusal is in line with ST CG [2011] UKUT 00252 (IAC). The judge's findings at §13 of the decision show that she has not engaged with the facts of the appeal. The judge found that the appellant is not Eritrean because he chose to conduct his interview in Amharic, was unable to give a meaningful description of Assab and did not provide three witnesses to the appeal. At paragraph 22.03 of the COIS report on Eritrea it is confirmed that Amharic, a legacy of Ethiopian rule, is still widely spoken.

7. In granting permission to appeal, Judge Osborne found, "it is at least arguable that the judge was arguably wrong to have taken the appellant's judicial review application as a matter which undermines his credibility. The legal system is there to be used by those who feel aggrieved for any reason. That is what the appellant did.

8. "Although the determination must be read in its entirety and although all matters included in the determination should be read in their full context, nonetheless the issue of the appellant's speaking of Ahmaric in relation to his nationality is a major piece of evidence. It is arguable that the judge failed to take regard or sufficient regard to the background information in the COIS report which confirms that Amharic is still widely spoken in Eritrea. As these arguable errors of law have been identified, all the issues raised in the grounds are arguable."

9. I find no merit in the ground of appeal in relation to §13 of the decision and the finding that the appellant is not Eritrean. In reaching that conclusion, three particular strands of evidence were relied on by the judge, only one of which related to the choice to conduct the asylum interview in Ahmaric. Whilst the background evidence confirms that Ahmaric is spoken in Eritrea, the criticism of the judge ignores consideration of the decision as a whole. It was not simply that he chose to be interviewed in Ahmaric, but it was the appellant who claimed that his mother tongue was Tigrinya. At Q14 he stated that his main language was Tigrinyan, in which he was fluent. As the judge summarised at §10, the appellant also gave his evidence at the appeal hearing in Ahmaric, at his request. He stated that he spoke Tigrinya at home, which he learnt from both parents (Q17), but particularly his mother, and also

claimed to be able to read Tigrinyan. Given that his mother died when he was 5 years of age, by which time the family was in Ethiopia, the judge found it not plausible that he could have learnt to both read and write Tigrinyan at that early age. In 2000, at age about 11/12 he was deported from Ethiopia back to Eritrea and lived there until May 2006. On the appellant's account the periods of time in each country are somewhat vague. At Q23 he said he lived in Ethiopia for 10 years, but that he left Assab at age 2, and that he left Ethiopia in 2000 and remained a further 6 years in Eritrea.

10. It was not accurate for the judge to suggest that he could only be exposed to Ahmaric in Ethiopia, but the general point remains valid. I find that it was reasonable, on the basis of the appellant's own account, for the judge to expect that he would have a better language facility in Tigrinyan, his native tongue and the language of Eritrea, than Ahmaric, to which he would have had rather more limited exposure, primarily between starting school until leaving at age 11/12 when deported to Eritrea, where he lived for another 6 years or so.

11. The judge's conclusion as to the appellant's nationality was also supported by the appellant's apparent lack of familiarity with Eritrea or his alleged birthplace of Assab. His answers to questions designed to test this knowledge were vague and did not demonstrate any such familiarity. Further, the appellant purported to rely on three witnesses to verify his Eritrean nationality, but none of them were asked to attend the appeal hearing to give evidence in support of the appellant's case.

12. It is further relevant to the judge's credibility assessment that by his own confession the appellant had been untruthful about making a previous claim for asylum in Italy and absconded after encountering immigration officers in August 2008. See Q142 of his asylum interview where he admitted lying in his screening interview.

13. It can thus be seen that §13 of the decision was the distillation and summary of the judge's conclusions on the evidence given by the appellant both in his interview and at the appeal hearing. Whether or not he was exposed to Ahmaric in Eritrea, I find that the judge's point remains valid: that it is not credible that a person who claims to have been raised by his mother speaking and writing Tigrinya at least for the first five years of life and thereafter living and/or attending school in Eritrea from the age of 11/12 until adulthood should choose to be interviewed and give evidence in Ahmaric rather than Tigrinyan.

14. In the circumstances, I find no material error of law in this ground of appeal.

15. In relation to the complaint about §9 of the decision and the judge's observations about seeking judicial review, I find that when read as a whole, it is clear that the point the judge was making was as to the appellant's behaviour and in particular, whether he had made a full and frank disclosure, as submitted by Ms Faryl. In assessing his credibility the judge relied on the delay in the appellant telling the truth; he only admitted the asylum claim in Italy when he came to light that his fingerprints had been taken there. In this regard, it should also be noted that the

appellant absconded after encountering Immigration Officers in 2008. Whilst the appellant exercised his right to make a judicial review application (which in fact was refused), it was not incumbent on the judge to turn a blind eye to ignore the fact that his overall behaviour, which necessarily included the making of the judicial review application, had the effect of delaying things such that the Dublin Convention could no longer apply to return him to Italy. In making these observations the judge was not suggesting that the judicial review application was unmeritorious (which it turned out to be), or that he was not entitled to see such avenues of legal redress as were open to him. In any event, even if the judge's comment was improper and amounted to an error of law, I find that it was not material to the outcome of the appeal. It does not follow that the rest of the decision is flawed, or that the assessment of credibility would or could have reached any different conclusion in the absence of comment about judicial review or that the other credibility findings were somehow undermined by this comment so that the findings should be set aside.

16. A further ground of appeal was abandoned at the hearing before me, when it was pointed out that when carefully examined, the documents at 18-19 of the appellant's bundle undermined the appellant's case and in particular the ground of appeal that the judge had failed to give proper consideration to the appellant's application to the Ethiopian embassy. The documents did not assist the appellant at all and thus there could be no error of law in failing to mention them in the First-tier Tribunal decision.

Conclusion & Decision

17. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed: Date: 4 December 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

Signed:  Date: 4 December 2014

Deputy Upper Tribunal Judge Pickup