



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number:  
AA/03535/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 September 2014**

**Determination promulgated  
On 11 December 2014**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Secretary of State for the Home Department  
Appellant**

**and**

**Mihert Welday  
(Anonymity direction made)**

**Respondent**

**Representation**

For the Appellant: Mr S Kandola, Home Office Presenting Officer.  
For the Respondent: Mr J Dixon of Counsel instructed by Blavo & Co.

**DETERMINATION: ERROR OF LAW**

1. This is an appeal against the decision of First-tier Tribunal Judge M R Oliver promulgated on 28 July 2014, allowing Ms Welday's appeal against the Secretary of State's decision dated 12 May 2014 to remove her from the UK following the refusal of her application for asylum.

2. Although before me the Secretary of State is the appellant and Ms Welday is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Ms Welday as the Appellant and the Secretary of State as the Respondent.

### **Background**

3. The Appellant claims to be a national of Eritrea, born on 5 April 1992. Her nationality is disputed. Her claimed immigration history is summarised at paragraphs 9-10 of the Respondent's 'reasons for refusal letter' ('RFRL') dated 9 May 2014: it is unnecessary to repeat that history here - I make reference to it as is incidental for the purposes of this document. For the moment, suffice to say that the Appellant claimed asylum on 22 November 2013 based on fears arising from her religion (Pentecostal Christian).
4. The Appellant's application for asylum was refused for reasons set out in the RFRL of 9 May 2014. A Notice of Immigration Decision dated 12 May 2014 was served in consequence.
5. The Appellant appealed to the IAC.
6. The Appellant's appeal was allowed by the First-tier Tribunal for reasons set out in the determination promulgated on 28 July 2014.
7. The Respondent applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Cox on 12 August 2014. In granting permission Judge Cox said, in part, "*Brevity is a virtue, so long as material issues between the parties are covered and resolved. I do not think the Judge adequately achieves that in his findings at [39] and [40]. There is arguably a failure to give adequate reasons...*".
8. The Appellant filed a Rule 24 response resisting the Respondent's challenge on 27 August 2014.

### **Error of Law**

9. As noted above, the Appellant's claimed Eritrean nationality has been disputed by the Respondent.
10. In this context the Respondent placed particular reliance upon a 'Linguistic Analysis Report' prepared by Sprakab (Respondent's bundle annex C). The conclusion of the report, stated to be reached with a "*very high*" degree of certainty, was that the Appellant's linguistic background was assessed to

be 'Ethiopia'. The Report also commented, amongst other things, that the Appellant's linguistic level in Amharic was 'Native level', that *"Her speech did not display features of Tigrinya which is commonly occurring among Eritreans"*, and similarly that she had *"mastered Amharic to the level of a mother tongue speaker. Her speech did not display any features of Tigrinya, which can be expected among Eritreans"*.

11. At paragraph 21 of the RFRL the Respondent inaccurately stated the conclusion of the report in respect of the Appellant's linguistic background in these terms: *"The results assessed you to be with a very high degree of certainty to be from Ethiopia"*. The report did not express any such conclusion or otherwise make any assertion about nationality or origin. It confined itself, appropriately, to linguistic background. Whilst this may in some instances coincide with nationality and/or origin, it is a different concept and not inevitably congruent with, or probative of, nationality.

12. Be that as it may, and in my judgement for present purposes of more significance, at paragraph 22 of the RFRL the Respondent made the following observation:

*"It would be expected that as the daughter of Eritrean parents - even if brought up in Ethiopia, your speech would display some features of Tigrinya."*

13. The Respondent also made the following more general observation at paragraph 17 of the RFRL - which is in accordance with the observation I have made at paragraph 10 above:

*"Although it is noted that background evidence states that Amharic is also spoken in Eritrea, it follows that, it is accepted that no findings can be made regarding your nationality based solely upon the languages that you speak. However, this information must be considered in the round; along with all other credibility points and material facts of your case."*

14. In my judgement the First-tier Tribunal Judge has failed to demonstrate in his reasons that he has engaged adequately with the Respondent's case on an issue that is a key - and indeed near determinative - issue in the appeal.

15. Paragraph 39 of the determination of the First-tier Tribunal Judge is, in part, in the following terms:

*"The appellant remained consistent throughout in her story and it was hardly surprising that someone who spent very little time*

*in Eritrea even cumulatively and grew up largely outside Eritrea would speak in a way not typical of Eritrea. ... The findings as to language are problematic. It was specifically accepted in the refusal that no findings could be made regarding the appellant's nationality based solely on the language that she spoke. The refusal went on, however, to state that the results of the language analysis "assess you to be with a very high degree of certainty from Ethiopia". This is inconsistent. I have to make an assessment which in the absence of documentary evidence is largely based on credibility. I find her to be credible and that she has shown to the lesser standard that she may very well be of Eritrean nationality."*

16. The Judge was correct to identify that there was an inconsistency, or tension, in the Respondent's reasons - an inconsistency that in my judgement arises because of the error in paragraph 21 of the RFRL, to which I have referred at paragraph 11 above. However, such an inconsistency in the Respondent's reasoning did not in itself undermine the validity and contents of the Sprakab report itself. Nor does the inconsistency affect the coherence of the Respondent's reasoning at paragraph 22 of the RFRL (quoted at paragraph 12 above). The Judge quite simply fails to engage with this latter point. The reader of the determination is left with no understanding of why the Judge considered the Appellant demonstrated no trace of exposure to Tigrinya. The Respondent's case in this regard was not as limited as the Judge suggests: this was not merely a case of speaking in a manner 'not typical of Eritrea', but there being displayed no features of Tigrinya notwithstanding the Appellant's claim to have been born to Eritrean parents in Eritrea, and though departing at the age of 1 for Ethiopia to have also spent about one year there when about 8 years old in 2000/2001, and to have spent some further time there in 2009/2010.
17. I note that the Appellant has suggested some reasons as to why she does not speak Tigrinya or display any characteristics of Tigrinyan speech: note for example her account of her history set out at paragraphs 27 and 35 of the determination, and the matters advanced at paragraph 33. Mr Dixon sought to emphasise such possible explanations before me.
18. The difficulty in that regard is that the First-tier Tribunal Judge does not in his reasons engage with such matters or otherwise demonstrate his reasoning process. It is not sufficient simply to state, as the Judge in effect does, that he believed the Appellant. A conclusion on credibility necessarily had to be informed by an analysis of the evidence and the competing

arguments of the parties. Such an analysis is missing in respect of the implications of the contents of the Sprakab report.

19. I have reminded myself of what has been said in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**:

*“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”*

20. Further I note the observation by the Tribunal comprised of the President Mr Justice McCloskey and Upper Tribunal Judge Perkins in **MK (duty to give reasons) [2013] UKUT 00641 (IAC)** at paragraph 11 *“The duty [to give reasons] is contextually sensitive.”*

21. The context in this case was a core issue of dispute between the parties that went to the heart of the Appellant’s claim. In my judgement the reasons do not explain why the Respondent’s argument was rejected.

22. I find that the Judge erred in law accordingly, on a material matter that went to the heart of the Appellant’s claim and credibility.

23. The effect of the error is that the decision of the First-tier Tribunal must be set aside. In such circumstances it is not necessary to consider the further grounds of challenge advanced by the Respondent.

24. A rehearing of the appeal with all issues at large is required, and the appropriate forum is the First-tier Tribunal. It is not necessary to make any specific Directions for the further conduct of the appeal. Both parties are at liberty to file any further evidence upon which they seek to rely up to 7 days prior to the re-listed hearing.

### **Decision**

25. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

26. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge M R Oliver.

**Deputy Judge of the Upper Tribunal I. A. Lewis 11 December 2014**