Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01125/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 August 2015	**On 3 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR BENYAM NELDEMARYAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Smeaton, Counsel, instructed by Blavo and Co Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Bart-Stewart (Judge Bart-Stewart), promulgated on 11 June 2015, in which she dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 9 January 2015 to refuse his asylum claim and to remove him from the United Kingdom by way of directions under paragraphs 8-10 of Schedule 2 to the Immigration Act 1971.

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2. Permission to appeal was granted by First-tier Tribunal Judge Cox on 6 July 2015.

Background

3. Appellant has always claimed to be an Eritrean national, although the Respondent believes him to be Ethiopian. He was born on 24 April 1994. His claim was essentially as follows. He had been born in Eritrea but left aged only one year old. He lived in Ethiopia until his departure in 2012. On his account, he had had no lawful status in Ethiopia. As a teenager, the Appellant had helped to distribute leaflets on behalf of the OLF. As a result, he had been arrested and detained. He escaped from detention and then fled the country. He arrived in the United Kingdom on 10 January 2014 after a long and hazardous journey.

4. In rejecting the Appellant's claim, the Respondent concluded that his account was not credible. It was found that he was in fact an Ethiopian national. Alternatively, he could at least obtain such nationality. Further, his account of helping the OLF and of being detained was rejected. It was proposed to remove him to Ethiopia.

The decision of Judge Bart-Stewart

5. The issue of the claimed OLF assistance and detention are dealt with at paragraphs 29-32 of the decision. She found that the Appellant had embellished his account of the OLF activities, and that it was inconsistent with the country information. In respect of the arrest and detention, she found that it was implausible that the Appellant would have gone to his local area after his claimed escape. It was found that the Appellant had not been arrested and was not at risk of persecution.

6. In respect of the nationality issue, Judge Bart-Stewart found at paragraph 33 that it was implausible that that Appellant had attended school unless he was registered with the Ethiopian authorities. She does not accept that he was born in Eritrea. In paragraph 34 evidence from the Appellant about photographs and information provided to him by an elderly woman is rejected. An attempt by the Appellant to approach the Ethiopian authorities in the United Kingdom is dealt with in paragraph 35. It is said that this evidence added nothing to the overall claim. Paragraph 36 takes into account the Appellant's failure to claim asylum on route to the United Kingdom. In paragraph 37, Judge Bart-Stewart concludes that the Appellant had failed to show that he was Eritrean, and that is was more likely that he was Ethiopian. She further states that in any event the Appellant could acquire Ethiopian nationality through the provisions of the 2003 Proclamation.

7. Paragraphs 38-39 relate to Article 8 but have no relevance here, as the conclusions are not challenged by the Appellant.

The grounds of appeal

8. The grounds take issue with Judge Bart-Stewart's findings and conclusions on the OLF issue and that of nationality. Permission to appeal was granted on all grounds.

The hearing before me

9. Ms Smeaton relied on her grounds and skeleton argument. The Appellant's challenges should be viewed cumulatively. On the OLF issue, two of the three reasons provided for rejecting the account are unsustainable. In respect of the detention and escape, there is no finding on the act of escaping, as opposed to what the Appellant did thereafter. There are no reasons for why the Appellant's subsequently movements were deemed implausible. On nationality, there were inadequate reasons for why the claimed Eritrean nationality was rejected, given that registering with the Ethiopian authorities was not the same as having Ethiopian citizenship. The country information cited in respect of the school issue did not support the finding made. The Judge appeared to have conflated the possibility of being an Eritrean registered with the Ethiopian authorities with that of actual Ethiopian citizenship. There was inadequate consideration of the 2003 Proclamation. It was confirmed that the conclusions at paragraphs 34-36 were not challenged.

10. Mr Melvin relied on his expanded rule 24 notice and the case of Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC). The second sentence of paragraph 33 made it clear that the Appellant had been registered and he then attended school. Judge Bart-Stewart found that the Appellant was not Eritrean. The Appellant had failed to obtain real evidence about his true nationality. In respect of the 2003 Proclamation, the Appellant had had a bank account and an income. The findings should be seen in the round. The Appellant was in reality seeking to re-argue matters that had been determined by the First-tier Tribunal.

Decision on error of law

11. I reserved my decision in this case. Having given careful consideration to Judge Bart-Stewart's decision as a whole, the grounds, submissions, and the case of Shizad, I conclude that there are material errors of law such as to render the decision unsustainable.

12. I have of course borne in mind that extensive and detailed reasons are not required in most, if any, cases. However, there must be adequate reasons, and any reasons which are provided must be sustainable by reference to the evidence and applicable standard of proof.

The OLF and detention issues

13. The finding that the Appellant's account of assistance for the OLF was incredible is based upon three reasons set out in paragraphs 30 and 31. The first of these is fully sustainable, namely that the Appellant had sought to embellish his account in paragraph 7 of his witness statement.

That part of the statement is inconsistent with the answers given in the asylum interview.

14. The second reason provided is that paragraph 18 of the same statement showed that the Appellant had an "intimate" knowledge of the Oromo and OLF, and any suggestion to the contrary was inconsistent. With respect to Judge Bart-Stewart, it is very difficult to see how the contents of paragraph 18 of the statement can properly lead to the conclusion that the Appellant in fact had an intimate knowledge of a cultural and political movement. The link between the evidence and the reason is not sustainable.

15. The third reason is, on my reading of paragraph 31, that the country information adduced by the Appellant showed that he ought to have known more about the Oromo and OLF. The problem with this reasoning is that it assumes that information obtained by relevant NGOs (in this case Human Rights Watch) would be available to ordinary people within Ethiopia. It assumes a level of engagement with the media, and also that the media was willing or indeed able to report on the arrests cited in the report. No reasons are given to support the assumptions which have been made. The third reason is therefore unsustainable.

16. Therefore, two of the three reasons are flawed. When combined with my conclusion on the other challenges, the single sustainable reason is insufficient to support the overall findings of Judge Bart-Stewart.

17. Turning to the detention and escape, Mr Melvin suggested that by setting out a brief summary of the Appellant's account, Judge Bart-Stewart was in effect saying why she rejected it. This is because the first sentence of paragraph 32 states that she found the account of the escape to be unlikely. This argument overlooks the fact that the only reason provided in the paragraph relates to the Appellant's movements after the escape, not the account of that event itself. To this extent I agree with Ms Smeaton's challenge. As I read the paragraph, the finding is that the account of the escape is rejected. The sole *reason* for this is that the Appellant went back to his local area. There is no reason as to why the act of escape itself is being rejected. In my view, clear reasons (albeit briefly expressed) on the core issue of the act of escape itself were required.

18. There have been material errors of law on the core issues of OLF assistance and the escape from detention.

The nationality issue

19. The primary finding in paragraph 33 is in effect that the Appellant must have been registered with the Ethiopian authorities in order to have attended school. If Judge Bart-Stewart was basing this finding upon pure speculation or an assumption that the Ethiopian educational system operated in a similar way to that in the United Kingdom she would have erred. However, country information is cited in support of her finding, that being paragraph 3.17.4 of the Respondent's OGN, and I assume that she

was relying on this. The passage cited speaks of "citizenship" being the key to the absence of restrictions on education, amongst other things. The difficulty with the reasoning employed is as follows. The attendance at school is premised upon country information indicating that citizenship is necessary. However, Judge Bart-Stewart is finding in this core paragraph not that the Appellant was an Ethiopian citizen, but only that he was registered with the authorities. Yet being registered with the Ethiopian authorities is not the same thing as being a citizen: an Eritrean national could be registered but not have citizenship. Therefore, it appears to me as though the country information relied on does not actually support the finding made. In addition, or alternatively, there has been an erroneous conflation of registration as an Eritrean national with Ethiopian nationality.

20. In turn, this leads to the undermining of the findings at paragraph 37 that the Appellant was not an Eritrean national. This is because there has been no adequate reasoning as to why the Appellant was not in fact Eritrean at all. I note too that whilst not expressly raised in the grounds, the Judge's finding that the Appellant was not born in Eritrea is not supported by any reasons.

21. The further consequence of the above is that the conclusion that the Appellant is more likely to be Ethiopian is materially undermined. As registration is not the same as citizenship, there is no independent reasoning as to why/how the Appellant obtained Ethiopian nationality in the past.

22. In respect of the 2003 Proclamation, this is only dealt with briefly as an alternative at the end of paragraph 37. It is said that the Appellant "appears" to meet the requirements. However, nothing is said about the need to show current lawful income (as opposed to any past savings), or the need to show domicile in Ethiopia for the four years preceding any application to the authorities. In short, there is insufficiently detailed consideration of this issue.

23. As mentioned previously, I have viewed the Judge's decision in the round. I have borne in mind that paragraphs 34-36 are unchallenged by the Appellant. They clearly do not assist his cause. However, it is right to note that Judge Bart-Stewart herself stated that the issues of the elderly woman and the embassy visit did not add to the claim, as opposed to materially undermining it. The failure to claim on route to the United Kingdom is relevant, but it does not affect my conclusion that that errors of law identified already are material to the outcome of the Judge's decision.

24. I set aside the decision of Judge Bart-Stewart.

Disposal

25. At the hearing I asked the representatives about the appropriate course to follow if I found there to be material errors of law. Mr Melvin submitted

that the matter should be kept in the Upper Tribunal. Ms Smeaton sought a remittal to the First-tier Tribunal.

26. I conclude that a remittal is the right course of action in this case. I have found that important aspects of the credibility findings are flawed, and that the important issue of nationality has not thus far been adequately dealt with. The second issue is bound up in the overall assessment of credibility. Given this, the whole case should be looked at afresh, with none of Judge Bart-Stewart's findings preserved, save for those relating exclusively to the Article 8 claim.

Anonymity

27. The First-tier Tribunal did not make a direction and none has been sought from me. I make no direction.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions

1. **The appeal shall be reheard afresh, with no findings of Judge Bart-Stewart preserved, except for those relating exclusively to the Article 8 claim;**
2. **Judge Bart-Stewart shall have no further involvement in the hearing of this appeal;**
3. **The appeal shall be re-heard on the first available date after 6 weeks of the promulgation of my decision;**
4. **Any further evidence to be relied on by either party shall be filed and served with the First-tier Tribunal and other party no later than 14 days prior to the next hearing;**
5. **An Amharic interpreter is required for the next hearing.**

Signed Date: 1 September 2015

H B Norton-Taylor
Deputy Judge of the Upper Tribunal