Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: AA/07088/2014**

THE IMMIGRATION ACTS

Heard at City Centre Tower Birmingham	**Decision & Reasons Promulgated**
On 13 July 2015	**On 27 July 2015**

Before:

UPPER TRIBUNAL JUDGE PITT

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR EPHREM HUSSEIN

(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard (Solicitor)
For the Respondent: Mr Smart (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the respondent's (the Secretary of State for the Home Department's) appeal against the decision of First-tier Tribunal Judge Anthony promulgated on the 7th April 2015. Although it is the respondent's appeal, for the sake of clarity, throughout this decision the parties will be referred to as they were referred to in the First-tier Tribunal hearing, such that Mr Hussein is referred to as the appellant and the Secretary of State for the Home Department is referred to as the respondent.

Background

2. The appellant was born on the 1st May 1989. His nationality is disputed. The appellant claims to be a national of Eritrea, whereas the respondent believes him to be a national of Ethiopia.

3. The appellant had originally appealed to the First-tier Tribunal against the respondent's decision dated the 3rd September 2014 to remove the appellant as an illegal entrant to the United Kingdom, after the refusal of his asylum claim. That appeal was brought under section 82 (1) of the Nationality, Immigration and Asylum Act 2002.

4. The appellant's asylum claim was made on the basis that he is a Pentecostal Christian from Eritrea who is of draft age and who left Eritrea illegally. He claims that he was born in Eritrea, but left Eritrea in 1995 when he was about 6 years old, moving with his parents to Addis Ababa in Ethiopia. He claims that in 2000, due to the war between Eritrea and Ethiopia, he and his family were deported back to Eritrea and they went to Campo Sudan in Assad, Eritrea, where he remained until 2005. The appellant's case is that his problems relating to his religion as a Pentecostal Christian began in 2002 when the Pentecostal faith was banned in Eritrea and he could no longer practice his faith openly. It was claimed that his home was raided towards the end of 2002 and that his father was taken away by the authorities. The Appellant says that he continued to live in Eritrea until 2005, when he

fled with his family to Khartoum in Sudan. In 2008 he married his wife and says he remained there in Khartoum until 2013, when he then travelled from Sudan, via the Sahara desert, into Libya. The appellant then travelled from Libya, via Italy to the UK, where he claimed asylum. The respondent refused the appellant's asylum claim on the basis that it was not accepted that he was a national of Eritrea, nor was it accepted that the appellant was a Pentecostal Christian, and it was not accepted that he left Eritrea illegally. It was found that he was a national of Ethiopia.

5. The appellant appealed against that decision to the First-tier Tribunal (Immigration and Asylum Chamber), which appeal was heard by First-tier Tribunal Judge Anthony on the 13th March 2015. Her decision was promulgated on the 7th April 2015. First-tier Tribunal Judge Anthony allowed the appellant's appeal under the Refugee Convention and also under Article 3 of the ECHR. First-tier Tribunal Judge Anthony accepted that the appellant was a genuine Pentecostal Christian and that he was an Eritrean national, who was of draft age and who had left Eritrea illegally. She further found that the appellant had some listening skills in Tigrinya, but limited speaking skills and that the appellant spoke Amharic. The First-tier Tribunal Judge accepted, given the appellant's evidence that he only spent a limited amount of time in Eritrea, that therefore he could not be expected to give correct answers to all the questions that he was asked during the interview, pertaining to his nationality and that he was only a minor when he was living in Eritrea. First-tier Tribunal Judge Anthony accepted that at the time of the interview with the respondent, the appellant had not lived in Eritrea for nearly 10 years. She found that she did not accept that all families will have been split up when being deported back to Eritrea and that as the appellant was only 11 years old at the time, this explained why he was unable to recall what provisions or support he and his family were provided with, when they were deported back to Eritrea.

6. The First-tier Tribunal Judge found that it was plausible or reasonably likely for many ethnic Eritreans to only speak Ahmaric fluently and that in the appellant's case he had moved to Ethiopia when he was very

young and was schooled in Ethiopia. The First-tier Tribunal Judge accepted to the lower standard of proof applicable in asylum claims the appellant had proved that he was of Eritrean nationality and that as a result of his religion and because he was of draft age, had not completed national service and had left Eritrea illegally, that the appellant was at a real risk of persecution upon return, such that he was entitled to asylum.

7. On the 15th April 2015, the respondent made an in time application for permission to appeal to the Upper Tribunal. It was argued within the grounds of appeal that the First-tier Tribunal Judge failed to give adequate reasons for her findings in respect of the appellant's language abilities and that was unclear what was meant by the Judge in her finding at paragraph [23] that the appellant had "some listening skills in Tigrinya". It is argued that the Judge has relied in making her language findings upon the evidence of Mr Asgodom, the appellant's pastor, despite him not being a language expert and that the Judge has made a material error of law. It is further argued in grounds two of the grounds of appeal, that the Judge erred in law in applying the case law of ST (Ethnic Eritrea-nationality-return) Ethiopian CG [2011] UKUT 00252 (AIC).

Submissions

8. In his submissions on behalf of the respondent Mr Smart relied upon the grounds of appeal. He referred specifically to the refusal letter wherein the question of the appellant's nationality was dealt with between paragraphs [25] and [50] inclusive. Mr Smart referred us in particular paragraphs [33] and [35] and to the extracts from the Country of Origin Information Report on Eritrea, dated the 18th September 2013 in respect of the languages spoken in Eritrea, and argued that it was stated that Amharic was not listed as one of the major language groups in Eritrea, but was a principal language, which was widely spoken in Ethiopia.

9. Mr Smart referred specifically to the findings of First-tier Tribunal Judge Anthony at paragraph [23] of her decision that "both representatives were unable to refer me to any material within the background material which confirms that ethnic Eritreans are able to speak at least one other language other than Amharic. In the absence of such evidence, I find that it is plausible or reasonably likely that many ethnic Eritreans only speak Amharic fluently, given the Eritrea did not become independent from Ethiopia until 1991." This, he argued, was contrary to the Country of Origin Information Report information referred to within the Notice of Refusal. He argued that in that regard, the First-tier Tribunal Judge had specifically relied upon the evidence of Mr Asgodom, the pastor, who told the Judge that "most Eritreans once lived in Ethiopia and will therefore be able to speak Amharic" (paragraph [15] of the decision). Mr Smart argued that as this information had not come from the Country of Origin Information Report, the Judge must have relied upon Mr Asgodom in that regard, despite the fact that Mr Asgodom was not a language expert.

10. Mr Smart further argued that the First-tier Tribunal Judge's finding at paragraph [23] that "I find the appellant does have some listening skills in Tigrinya and accept his evidence and that of Mr Asgodom that he is not fluent in Tigrinya" again placed undue weight upon Mr Asgodom's evidence regarding the appellant's language abilities. He further argued that the findings of the Judge regarding what was meant by the appellant having "some listening skills in Tigrinya" was unclear. He argued that the First-tier Tribunal Judge materially erred in law. He argued that it was not possible to separate out the extent to which the First-tier Tribunal Judge relied upon these matters in concluding the appellant was of Eritrean nationality, rather than Ethiopian, and that the whole decision was thereby rendered unsafe.

11. In respect of the second ground of appeal, Mr Smart initially argued that the First-tier Tribunal Judge had failed to consider what steps the appellant had taken to prove his nationality following the country guidance case of ST (Ethnic Eritrea-nationality-return) Ethiopian CG [2011] UKUT 00252 (IAC). However, upon closer examination of the

country guidance case, Mr Smart conceded that it was a case dealing with the steps had to be taken by someone who has claimed that he had been deprived of his Ethiopian nationality and the steps such a person would have to take in order to show that they had attempted to prove their nationality, as opposed to someone in the appellant's position who was not claiming that he was in Ethiopian national who had been deprived of Ethiopian nationality, but who was claiming that he had always been an Eritrea national. We therefore do not accept that the second ground of appeal has any merit, as ST (Ethnic Eritrea-nationality-return) Ethiopian CG was not dealing with the appellant's scenario. The First-tier Tribunal Judge therefore did not need to consider the steps taken by him to prove "Ethiopian nationality", as he was never claiming that he was an Ethiopian national.

12. In his submissions Mr Howard rely upon his Rule 24 reply. He argued that the First-tier Tribunal Judge's findings in respect of the appellant being an Eritrean national were not solely dependent upon the Judge's assessment of his language ability. He argued that the Judge had accepted at paragraph [15] that the appellant was a genuine Pentecostal Christian, who attended church services every Friday. He further argued that the Judge had accepted that the appellant had given many correct answers in respect of the nationality questions asked during the asylum interview at [19] and that the Judge properly weighed up all of the evidence before concluding the appellant was an Eritrean national. He further argued that the Judge had not only considered the evidence Mr Asgodom, but also the appellant's own evidence regarding his language abilities, and the First-tier Tribunal Judge had borne in mind that the appellant had moved to Ethiopian when he was very young and was schooled in Ethiopia and that for most of his adult life the appellant had lived in Sudan, amongst both the Eritrean and Ethiopian communities. Mr Howard argued that when deported back to Eritrea, the appellant had been sent to Campo Sudan, which he argued explained why the appellant spoke Ahmaric and that the First-tier Tribunal Judge was entitled to rely upon the evidence of the appellant that he spoke Ahmaric at home. He asked us to find that there were no material errors of law and to dismiss the appeal.

Findings on Error of Law and Materiality

13. Mr Howard handed up a copy of the Country of Origin Information Service report on Eritrea dated 18th September 2013, that was relied upon by the Respondent in the Refusal Notice and which was the relevant Country of Origin Information Service report, as at the date of the decision of First-tier Tribunal Judge Anthony.

14. It was stated within the Country of Origin Information Service report at paragraph 1.01 that "the major language groups in Eritrea are Afar, Bilien, Hedareb, Kunama, Nara, Rashaida, Saho, Tigre and Tigrinya. English is rapidly becoming the language of business and is the medium of instruction at secondary schools and university. Arabic is also widely spoken."

15. First-tier Tribunal Judge Anthony at paragraph [15] accepted that Mr Asgodom had been a pastor since 2005 and stated specifically that Mr Asgodom had told her that "most Eritreans once lived in Ethiopia and will therefore be able to speak Ahmaric. He speaks to the appellant in Ahmaric. He confirms that the appellant does understand to Tigrinya, but his spoken Tigrinya is not good and not fluent". The First-tier Tribunal Judge went on at paragraph [16] to find specifically that "in relation to his evidence regarding the appellant's understanding of Tigrinya, I accept his evidence that the appellant has some listening skills in Tigrinya, but limited speaking skills." Given that in paragraphs [15] and [16], the First-tier Tribunal Judge was considering evidence from sources other than the appellant, as was stated in the heading to those paragraphs, it seems clear and we find that the First-tier Tribunal Judge has relied upon the evidence of Mr Asgodom in reaching her conclusions regarding the appellant's language skills in Tigrinya. We find that she was wrong to do so, given that Mr Asgodom did not

profess to have any expertise in language and was not a recognised expert in linguistics.

16. At paragraph [23] of the decision, First-tier Tribunal Judge Anthony found specifically that "it is plausible or reasonably likely for many ethnic Eritreans to only speak Amharic fluently, given that Eritrea did not become independent from Ethiopia until 1991". In reaching this finding First-tier Tribunal Judge Anthony, we find has again wrongly relied upon the evidence of Mr Asgodom, as there was no reference within the Country of Origin Information Service Report before the Judge, or elsewhere within the background evidence before her to indicate that many ethnic Eritreans only speak Ahmaric. The First-tier Tribunal Judge had specifically referred to the evidence of Mr Asgodom at [15] that "most Eritreans once lived in Ethiopia and would therefore be able to speak Amharic", this appeared to be the only source for that finding. Given that Mr Asgodom was a pastor and did not profess to have any skills as an expert in language or ethnology, we consider that to the extent that the First-tier Tribunal Judge has relied upon his evidence in concluding that "it is plausible or reasonably likely many ethnic Eritreans only speak Amharic fluently, given that Eritrea did not become independent Ethiopian until 1991", that First-tier Tribunal Judge Anthony has erred in law in relying upon evidence from Mr Asgodom of an expert nature, when he was not such an expert, and when that evidence was in fact contrary to the information provided within the Country of Origin Information Report, wherein Amharic was not even listed as a principal language within Eritrea.

17. Further, given the contents of the Country of Origin Information Report, the First-tier Tribunal Judge was wrong to take into consideration at paragraph [23] that "Both representatives were unable to refer me to any material within the background material which confirmed that ethnic Eritreans are able to speak at least one other language other than Amharic". There was no expert evidence before the First-tier Tribunal Judge to show that in fact Eritreans would be to speak Amharic, and given that the Country of Origin Information Report did not list Amharic as one of the principal languages in Eritrea,

her finding that there was no evidence to say that Eritreans would be to speak at least one other language other than Amharic was a finding that lacked any rational or proper evidential basis. Further, what in fact was meant by the First-tier Tribunal Judge by her reference to "ethnic Eritreans" in that context is not clear. Additionally, in respect of her finding that many "ethnic Eritreans" would be able only able to speak Amharic, insufficient and inadequate reasons were given by the First-tier Tribunal Judge in this regard, as either she has wrongly relied upon the evidence of Mr Asgodom when he was not an expert in linguistics, or she has failed to properly set out the evidential basis for her finding. On either basis, the same amounts to an error of law.

18. We find that the such errors in law are material, in that they may well have affected the outcome of the case, and that we find that is impossible to separate out the First-tier Tribunal Judge's consideration as to the languages which the appellant spoke or ought to have spoken, from her other findings regarding the answers that the appellant gave regarding nationality in interview, or the assistance that he and his family would have been provided if they had been deported back to Eritrea, or the fact that the appellant had received some schooling in Ethiopia and had also lived in Sudan, in considering the First-tier Tribunal Judge's assessment of nationality. The First-tier Tribunal Judge appears to have taken a holistic view to the evidence, such that it is impossible to conclude that the errors of law in her approach to language would have been immaterial to her finding on the lower standard of proof that the appellant was an Eritrean national and her consequent assessment and findings in respect of risk upon return. The decision therefore discloses material errors of law and is set aside in its entirety. The case is to be remitted back to the First-tier Tribunal at Birmingham for rehearing, to be heard before any First-tier Tribunal Judge other than First-tier Tribunal Judge Anthony. The respondent's appeal is allowed.

Notice of Decision

The decision of First-tier Tribunal Judge Anthony did contain materials errors material errors of law and is thereby set aside and the respondent's appeal is allowed. The case is remitted back to the First-tier Tribunal Judge for rehearing, to be heard at Birmingham before any First-tier Tribunal Judge other than First-tier Tribunal Judge Anthony.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and no application for an anonymity order was made before us. No such order is made.

Signed

Dated 19th July 2015

Rob McGinty

Deputy Upper Tribunal Judge McGinty