Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10661/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Determination Promulgated**
On 9 March 2015	**On 5 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

KUKI ZERIHUN GEBREMESKEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dickson of Counsel instructed by Blavo & Co, Solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 25th March 2014 Judge of the Upper Tribunal Coker gave permission (on a renewed application from the First-tier Tribunal) to the appellant to appeal against the decision of Judge of the First-tier Tribunal M Davies in which he dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant who claims to be a citizen of Eritrea.

2. The grounds of application contended that it was wrong for the judge to take issue with the appellant's apparent lack of knowledge about the area in Eritrea from which she claimed to come. It was also argued that the judge was wrong to suggest that the appellant's seven year period of residence in Greece showed that she did not have a fear of persecution in Eritrea on account of her faith. The grounds also criticised the judge for relying upon the appellant's failure to claim asylum in France as showing that she did not fear persecution. Finally the grounds argued that, in concluding that the appellant was not an Eritrean national, the judge had not dealt with the appellant's claim to have been deported from Ethiopia in line with objective evidence.

3. When granting permission Upper Tribunal Judge Coker thought that most of the grounds lacked merit. However she considered it arguable that reliance by the judge on the appellant's lack of knowledge of hotels and street names in Assab to show that the appellant was not Eritrean was unsustainable given the appellant's claim that she had only lived there for some two to three years following her deportation from Ethiopia and when only aged 14 at the time of deportation.

Error on a Point of Law

4. At the hearing Mr Dickson's submissions centred upon the point of arguable error identified by the Upper Tribunal. He emphasised that the judge had not shown that she had considered that the appellant was young at the time of her deportation and that she had indicated in her witness statement that she was nervous at the time of interview. Additionally, the judge had found the appellant's claim to be a Pentecostal Christian credible despite the respondent's rejection of that part of her claims. Thus, an important element of the appellant's claims had been accepted by the judge who therefore had to give cogent reasons for rejecting her claim to be Eritrean. He thought the appellant's lengthy stay in Greece was not inconsistent with her being a genuine refugee as she had only left that country when it became more unstable. She had also been under the control of agents in her journey to the United Kingdom. Mr Dickson also submitted that the judge's failure to deal with the issue of the consistency of the appellant's claim to be deported from Ethiopia to Eritrea was relevant.

5. Mr Harris agreed that the respondent had made no response to the grounds but argued that there was no material error in the decision. He also pointed out that there had been no presenting officer at the hearing who could have raised some of the more detailed issues. Nevertheless, Mr Harris agreed that it might be possible for the appellant to have only a limited knowledge of Assab in view of her age and the relatively short period of time she had lived there following deportation. He also agreed that the judge did not appear to have fully resolved the conflict of the appellant's assertion that she had claimed asylum in Greece (which the judge had found to be credible) but believed her time in Greece was an indication that she had not left Eritrea fearing persecution.

6. After hearing the submissions I announced that I was satisfied that the decision showed errors on points of law such that it should be re-made and now give my reasons for reaching that conclusion.

7. Although the determination is comprehensive, two significant credibility findings are reached which, I conclude, are affected by material errors.

8. In paragraph 33 the judge accepts that the appellant had attempted to claim asylum in Greece but the authorities were reluctant to accept her claim. It was also accepted that it would not have been possible for the appellant to claim international protection in either Sudan or Turkey. I therefore conclude that it was perverse, in the legal sense, for the judge to conclude that, as the appellant had spent seven years' working in Greece, it was a "clear indication" that she had not left Eritrea fearing persecution or that she had a genuine fear of being persecuted if returned to Eritrea. The decision does not show that the judge gave any or adequate reasons for this apparently contradictory finding when it was accepted that the appellant had tried to claim asylum in Greece.

9. Paragraph 45 of the decision reveals that the judge appears to have conducted an investigation of his own into features of the city of Assab by reference to the internet, albeit with the consent of the appellant's representative. The judge then reaches a conclusion that the appellant's lack of knowledge of specific locations in Assab meant that she had never lived there. However, the judge evidently fails to take into consideration the material point in relation to the appellant's lack of knowledge which had been set out in her evidence, namely, that she was only 14 years of age when she reached Assab following deportation and was only there for between two or three years. The judge erred in failing to show that this relevant information, which might have affected the appellant's geographical knowledge, had been taken into consideration before reaching his negative credibility finding.

10. In view of the material errors I have identified in the judge's credibility findings means that the appeal should be re-made. Having regard to the provisions of paragraph 7.2(b) of the Practice Statements for the IAC dated 25 September 2012 and taking into consideration that the evidence will have to be heard again, I consider that the matter should be heard afresh before the First-tier Tribunal.

DIRECTIONS

1. The appeal will be heard afresh by the First-tier Tribunal sitting at Manchester on a date to be specified by the Resident Judge.

2. The appeal should not be heard before Judge of the First-tier Tribunal M Davies.

3. An Amharic interpreter will be required for the hearing.

Signed Date

Deputy Upper Tribunal Judge Garratt