Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09246/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision Reasons Promulgated**
On 4 May 2016	**On 6 May 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S K GOYTOM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms A Speirs, of Katani & Co., Solicitors
For the Respondent: Mrs S Saddiq, Presenting Officer

DECISION AND REASONS

1. The appellant identifies herself as a citizen of Eritrea, born on 19 August 1988. She says that she left Eritrea in 1990 with her parents and went to Ethiopia, leaving there in November 2014 and arriving in the UK on 3 January 2015, when she sought asylum.

2. The respondent refused that claim by a decision dated 15 June 2015.

3. Based on the appellant’s complete lack of knowledge of Tigrinya, the language of her claimed ethnicity and the most widely used national language of Eritrea, and in absence of any documentary evidence, the respondent declined to accept that the appellant is Eritrean. The respondent considered that she is a national of Ethiopia.

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4. The appellant appealed to the First-tier Tribunal. Judge D'Ambrosio dismissed her appeal for reasons explained in his decision promulgated on 22 December 2015.

5. The appellant appeals to the Upper Tribunal on the following grounds:

   (i) At paragraph 57 the judge outlines the appellant's evidence regarding her education … the judge has not taken into consideration the appellant's evidence at paragraphs 1 and 13 of her witness statement that she attended school in Eritrea until she was 12 years old and had to repeat some years of school … the statement by the judge at paragraph 57, "Therefore I believe and find that she has changed the information about her earlier schooling in Ethiopia because it conflicted with her claim that she had not gone there until she was 12 years old; a claim which (she hoped) would enable her to deny that she is a citizen of Ethiopia" which has clearly damaged the appellant's credibility is unfounded. The judge erred in law by acting unfairly and not allowing the appellant the opportunity to comment on those points.

   (ii) At paragraph 59 the judge made findings in respect of the appellant's knowledge of Eritrea. The judge said, "She had more than enough time to obtain answers for them and for any other reasonably foreseeable questions" and went on to outline information available from various sources. The judge erred in law by failing to award the appellant the benefit of the doubt in accordance with the low standard of proof in asylum cases.

   (iii) At paragraph 60 the judge stated that the appellant should have obtained official documents proving her Eritrean nationality … this was not put to the appellant during the hearing and therefore she was not given the opportunity to explain … the judge stated "that seriously affects the appellant's credibility" … the judge erred in law by acting unfairly and not allowing the appellant the opportunity to comment on these points.

   (iv) At paragraph 62 the judge highlights the fact that the appellant did not seek to obtain evidence from Aster and "… failed to provide any reasonable explanation for the absence of any such evidence. That seriously adversely affects the appellant's credibility." Again … this point was not put to the appellant during the hearing … the judge has failed to take into account … that corroboration is not required in asylum appeals. The judge erred in law by acting unfairly and not allowing the appellant the opportunity to comment on these points.

   (v) Reference is made to paragraph 64 of the determination … the judge failed to take into account paragraph 16 of the refusal letter and the appellant's response at paragraph 16 of her witness statement. The judge outlines that "it is hardly surprising if for no other reason than that the information which that letter provided about the appellant was such that it would hardly encourage the Embassy to investigate whether it should agree that the appellant should be confirmed to be an Ethiopian citizen." Reference is made to paragraph 105 of *ST* Ethiopia CG [2011] UKUT 00252 which confirms the steps to be taken by a person asserting deprivation or denial of Ethiopian nationality … the appellant followed such steps as outlined at item 5 of the appellant's first inventory [a letter from her solicitors to the Ethiopian Embassy].

6. The respondent filed a Rule 24 response which includes the following:

   4. … The grounds … are no more than an argument with findings made by the judge … it is clear from the refusal letter, page 10, that the respondent did not believe, for the reasons given, that this appellant is Eritrean as claimed.

> 5. The appellant was on notice from 15 June 2015 and … had 6 months before the hearing to produce any evidence that she thought would address this issue, which she failed to do.
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> 6. … The judge has given clear reasons for rejecting the claim of the appellant to be an Eritrean citizen … it may be that some of the reasons given by the judge had not been put in cross-examination but those reasons are peripheral and only go to amplify the main reasons set out in the refusal letter and that were put to the appellant at the hearing.
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> 8. The grounds argue that the appellant should have been given the benefit of the doubt … [*KS* (Benefit of the doubt) [2014] UKUT 552 is quoted, including the proposition that the benefit of the doubt adds nothing of substance to a lower standard of proof].
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> 9. … The judge has considered the evidence in line with [*KS*] … The appellant is a 27 year old healthy woman who has moved through numerous safe countries choosing the UK to be the place where she claimed asylum … there is nothing in her evidence that shows she should be afforded the benefit of the doubt that might be afforded a minor or someone with medical issues that showed that she may be a vulnerable person.

7. The submissions by Ms Speirs generally followed the lines of the grounds. On the points said not to have been put to the appellant, she accepted that it was not known what answers or explanations the appellant might have offered. She has made no application to introduce further evidence. However, the absence of a fair opportunity to respond was the essential thrust of the grounds. As to the appellant's knowledge of Eritrea, it was not reasonable to assume that she would know what questions she might be asked, and she had answered 11 out of 15 correctly. The judge did not appear to have given this matter negative significance, but he ought to have found it to have been positively in the appellant's favour, and had in effect imposed a higher burden of proof than the law required. The judge had gone too far in relying on matters which are not in the refusal letter and had not been put to the appellant. The appellant was criticised for not having sought any evidence from an individual named as Aster, but her evidence would have been given minimal weight anyway. The letter sent to the Ethiopian Embassy was exactly as suggested by country guidance case law. It made little sense for the judge to find that this "would hardly encourage" the Embassy to reply. It was accepted that the decision contained other reasons which had not been criticised, but the final submission for the appellant was that there were several reasons which were flawed, and the decision as a whole was undermined.

8. Mrs Saddiq submitted that the determination contained no material errors, and that the analysis by the judge was logical, both on the points challenged and on points which had gone without challenge. The appellant had been asked in cross-examination about trying to obtain an identify card and about her lack of ability to speak Tigrinya [representatives compared their record of proceedings and agreed on this point]. It was a regular part of disputed nationality cases to test knowledge of the country. While that had to be approached with caution, the judge had simply found this issue to be neutral, a conclusion which

was plainly open to him. He had explained why he gave it no particular weight in favour of the appellant. The appellant had been asked about the absence of any documents from Eritrea, and confirmed that what she produced was all she had. The judge was entitled to observe that if her account were true she ought to have been able to produce further evidence. Those were sensible and properly explained conclusions. There was no element of surprise on the central issue of the appellant's national origins and personal history. The judge had not fallen into any error about there being no legal requirement for corroboration, having correctly directed himself at paragraph 51. The absence of a response from the Ethiopian Embassy was another point taken not as adverse to the appellant but as neutral. The determination as a whole was fully reasoned and should stand.

9. Ms Speirs in response submitted that at paragraph 64 the judge did appear to find the letter to the Embassy and the absence of a reply to be a negative rather than a neutral factor. The appellant could have done no more. The appellant had said in written submissions (provided after the hearing, as directed by the judge) that in those circumstances the burden of proof had passed to the respondent, a submission with which the judge failed to deal. She accepted that there is no ground of appeal to the Upper Tribunal raising that point.

10. I reserved my decision.

11. The appellant's grounds are much of one pattern and in the main can be answered collectively.

12. The appellant was generally on clear notice of the case she had to meet. There are no points identified in the grounds which unfairly took her by surprise.

13. In any event, the appellant has not hinted at any further explanation she might have provided. Without offering to do so, she cannot show that she has suffered any prejudice.

14. The judge gave a number of good reasons for declining to accept that the appellant is a generally credible witness or is an Eritrean national. To most of these reasons, no challenge has been made. It is a particularly strong point that if she was brought up by Tigrinya speaking parents in Eritrea until the age of 12 and lived with at least one Tigrinya speaker thereafter, as she says, she would remain fluent in Tigrinya.

15. Certain points about which the appellant makes complaint have been treated by the judge as no more than neutral. He sensibly explained why her knowledge of Eritrea did not advance matters on her behalf. His comment about the absence of a response from the Embassy is at first sight rather negative, but it is in fact perhaps not surprising that the Embassy has made no reply. In any event, I do not read into the judge's decision that he treated this as going against the appellant.

16. There was nothing wrong with the judge attaching negative significance to the absence of evidence from Aster. Nor do I agree with the submission that this is evidence which would inevitably have been discounted. The appellant says this person sheltered her for about 2 years, arranged and paid for an agent to take her to the UK, and continues to look after the her child in Ethiopia. If her account is true the appellant must have been anxious in the extreme to maintain contact with and obtain information from Aster, and must feel very much in her debt. As the judge pointed out, there is no reason why she might not have provided "a sworn Affidavit with proof of her identity such as passport or ID" (paragraph 62).

17. There is no doctrine of the benefit of the doubt which ought to have been applied so as to enhance the appellant's credibility.

18. In short, the appellant had a full and fair opportunity to put her case, and has shown no legal error in the judge's thorough reasons for rejecting it.

19. The appellant left it too late to make an argument about the burden of proof, but the outcome would plainly have been the same; this was not a finely balanced case.

20. The determination of the First-tier Tribunal shall stand.

21. No anonymity direction has been requested or made.

5 May 2016
Upper Tribunal Judge Macleman