Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00225/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 23 November 2017	**on 27 November 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

GIRMAY HADGU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Spiers, of Katani & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Blair, promulgated on 6 July 2017, dismissing his appeal against refusal of asylum.

2. Having heard submissions from both parties, I indicated that ground 4 could not be upheld, and it was doubtful whether ground 1 disclosed any error, but grounds 2, 3 and 5 together were sufficient to require a re-hearing.

3. Ms Speirs was content for the case to be remitted, without further resolution of ground 1.

4. The Judge did not simply find that the appellant failed to establish his case, he held in unusually trenchant terms that the evidence from the appellant and two witnesses was perjured (¶38, 40).

5. Ground 2, in particular, is well taken. The judge at ¶33 said the appellant had "no idea" at his asylum interview that Pentecost was celebrated 50 days after Easter, thought he must have learned about the matter since, and gave this quite a high degree of significance. At Q/A 213 – 215 and thereafter of the interview, the appellant did explain the meaning of Pentecost and its occurrence 50 days after Easter. The judge thus fell into a clear mistake of material fact which amounts to an error of law.

6. Ground 3 is directed against ¶35 – 38 and onwards, where the judge rejected evidence that the appellant's Church met in premises shared with the Free Church of Scotland at 265 St Vincent Street, Glasgow – partly because of the unlikelihood of the Free Church sharing premises with a Pentecostal denomination, and also because of the failings in evidence of the appellant and the two witnesses. Some of those failings were capable of being found significantly adverse, but, as the grounds point out, there was evidence from all three about where the Church met, and a letter from it, headed from that address. If there was no such Church, there was consistency and audacity in inventing a point which could easily be checked. There may be no error in applying judicial knowledge about the unlikelihood of denominational sharing, and that may not be simply speculative, as the grounds contend. However, these facts about the building at St Vincent Street are equally public knowledge: it is an architecturally significant building (close to the hearing centre), built in 1859, not for the Free Church or in its usual style, owned by Glasgow City Council, and rented since 1971 to the Free Church. Those are matters which may make sharing appear a little more likely.

7. This ground does not establish a clear mistake of fact (more might have been done in that direction), but it does disclose reasoning which, as a whole, and in light of other grounds, is difficult to support.

8. (Now that the matter is further out in the open, at a rehearing the appellant may be expected to produce clear evidence to show that there is or was sharing of the premises at 165 St Vincent Street. While the onus remains on the appellant, it is also an issue which might easily be resolved by the respondent.)

9. Ground 5 is directed against ¶29 of the decision. At interview the appellant said that he spoke both Amharic and Tigrinya (see Q/A 34 – 43) and was tested on 3 random phrases, which he translated from Amharic to Tigrinya. The refusal letter is based in part on the appellant's "declared" level of Tigrinya being "at odds" with his claim to be an Eritrean national and the "fact" that Amharic remains his primary language, but nothing is said about how his level of Tigrinya has been assessed, or how it falls

short of what might be expected. The Judge founds on the appellant having "little or no Tigrinya" but that assumption is not consistent with the appellant's asylum record or his other evidence, and is unexplained. This is another apparent misconception of the evidence.

10. Ground 4 is wrong. There are no legal rules that reasons for a grant of asylum are irrelevant, or that witnesses should be accepted as truthful because they have been granted refugee status. The case cited does not support the latter proposition.

11. It need not be resolved whether ground 1 amounts to any more than disagreement with the judge's assessment of the appellant's oral evidence regarding his baptism.

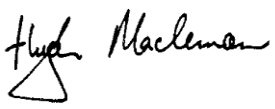
12. Grounds 2, 3 and 5 together disclose error such that the decision cannot safely stand as a resolution of the claim.

13. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.

14. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.

15. The member(s) of the FtT chosen to consider the case are not to include Judge Blair.

16. No anonymity direction has been requested or made.



24 November 2017
Upper Tribunal Judge Macleman