



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00743/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 5 July 2018

Decision & Reasons Promulgated
On 11 July 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

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Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant says he is a citizen of Eritrea, and is not a citizen of Ethiopia. The respondent considers that he is likely to be a citizen of Ethiopia.
2. The papers on file are rather confusing about the early history of the case. The notice of appeal to the FtT is accompanied by a letter from his solicitors dated 17 October 2016 saying that this is “an upgrade appeal as our client has been granted humanitarian protection”. It attaches a copy of the respondent’s decision letter dated 5 January 2015, which refuses permission both on asylum and on humanitarian protection grounds. However, the respondent had made a further decision dated 30 September 2016, sent to his solicitors under cover of a letter dated 3 October 2016. This

also refuses the appellant's claim on all available grounds. The substance of the two decision letters appears to be similar, and neither party pointed to any distinction; but the later one is the correct starting point.

3. The grounds of appeal to the FtT were generic, and raised no specific issue.
4. FtT Judge Farrelly dismissed the appellant's appeal by a decision promulgated on 30 January 2016.
5. The grounds of appeal to the UT are stated in the application for permission to appeal filed on 13 February 2018 in sub-paragraphs numbers (i) – (vii).
6. FtT Judge Norton-Taylor granted permission on 2 March 2018.
7. Further to grounds (i) and (v), which may be taken together, Ms Loughran referred to the letters on behalf of the appellant to the Ethiopian Embassy and to the witness statement recounting a telephone conversation with an Embassy official. The official stated that the appellant "would be considered Eritrean by the Ethiopian government". She submitted that the judge erred by accepting at paragraph 31 the evidence about that contact, yet not applying it in his conclusions; the appellant had advanced his information to the Embassy, and done all that was expected of him by country guidance; the judge gave no reasons for not accepting that, or for not accepting the appellant's explanations of why he had no further evidence; applying that guidance, the appellant had established his case.
8. The recorded comment by an Embassy official is not confirmation that the appellant does not have Ethiopian citizenship. It is only confirmation that on the information he has advanced, citizenship would not be recognised. The question remains whether that information is candid and reliable.
9. Country guidance does not say that appellants who advance their position to the Ethiopian Embassy along the same lines as to the respondent, and who are not acknowledged by the Embassy as Ethiopian citizens, have proved their case.
10. The last part of ground (v) identifies a slip by the judge in this branch of the case. He says at paragraph 44 that he agrees with the respondent's comments at paragraph 16 of the refusal letter. That paragraph is the same in both letters. It is based on the appellant refusing to approach the Ethiopian Embassy. That was so at the time, but by the date of the hearing he had approached the Embassy, in writing and in person. The judge plainly knew that, because it is what much of the hearing and of his decision was about.
11. It was open to the judge to reach the same eventual conclusion as the respondent, but not for the reason stated in paragraph 16. He may have meant that he shared the conclusion but not the reason, or there may some other explanation. To go further would be speculative, but it is inconsistent with the body of the decision that he thought paragraph 16 stood unqualified as a good reason.

12. Ground (ii) is inaccurate. It is not to be found in the decision that the appellant's inability to speak Tigrinya was "the sole reason why he is not Eritrean". Nor does the decision arise from overlooking evidence that Amharic is common in Eritrea. On the language issue, the decision is based on the expectations that his mother "would have had an influence" and that he might have "acquired knowledge from fellow university students of Eritrean origins" (paragraph 45). Neither of those points is challenged in the grounds, and they are within reason.
13. Ground (iii) says that the judge placed "too much reliance" on the appellant having humanitarian protection, which he does not. This mis-statement by the judge derives from the appellant's solicitors. It is not shown to have had any bearing on the decision reached.
14. Ground (iv) scrambles together several separate categories of "error": the weight given to an item of evidence (which, within reason, is a matter for the judge, not a category of legal error); an insistence upon corroboration (which cannot be found in the decision); non-application of the correct burden and standard of proof (which also cannot be found); and failure to give reasons (without fairly identifying the reasons which are given).
15. There is within (iv) the point that the judge referred to an Eritrean birth certificate not to an Eritrean baptism certificate.
16. The document is from the Eritrean Orthodox Church, set out in English and in another language. It purports to state the appellant's nationality as well as his dates of birth and baptism. Ms Loughran submitted that it went to support his claimed nationality, and should have been given weight as such.
17. The judge refers to the document as "a church birth certificate". He notes that it is only a copy; that it emanates not from the state but from a church; that it was issued 15 years after the purported dates of birth and baptism; and that information was lacking on whether it was possible to contact the church authorities to confirm their records. He declined to accept the appellant's account of how this copy came to be preserved when other documents were not. He then decided to give the document little weight. That has not been shown to fall outside his lawful and rational scope.
18. The slip in description of the document (if it can even properly be described as one) is plainly immaterial. I prefer the submission by Mr Mullen that ground (iv) amounts only to dressing up disagreement on the facts.
19. On ground (vi), Ms Loughran referred to the appellant's witness statement.
20. This ground is only further insistence that the facts should have been found not as the judge held, but as the appellant wished them to be.
21. Ms Loughran accepted that ground (vii) does not arise unless on proof of Eritrean nationality. In any event, rather than failing to deal with it, the judge at paragraph 30 explicitly accepted the point made in this ground.

22. Looking at the slip over paragraph 16 of the refusal letter in context of the whole decision, it is immaterial.
23. Separately and together, the grounds do not amount to more than insistence and disagreement on the facts, and they do not fairly represent the reasoning in the decision as a whole. They do not show that the making of the decision involved the making of any error on a point of law, such that it ought to be set aside.
24. The decision of the First-tier Tribunal shall stand.
25. The anonymity direction made by the FtT is maintained herein.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

6 July 2018
Upper Tribunal Judge Macleman