



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13872/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 2 November 2018

Decision & Reasons Promulgated:
On 16 November 2018

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

KGH

(ANONYMITY DIRECTED)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr J Howard	(Solicitor)
For the Respondent:	Mr D Mills	(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") which it sent to the parties on 9 February 2017; whereupon it dismissed her appeal against a decision of the Secretary of State made on 16 December 2017 refusing to grant her international protection.

2. The background circumstances are relatively straightforward. The claimant, who was born on 1 September 1989, says that she is a national of Eritrea. However, she claims that when she was aged only four years, her father was killed by the Eritrean authorities and that, when she was five, her mother fled to Sudan and took her with her. Her mother has subsequently passed away but the claimant remained living in Sudan until 2017 when she left that country and, assisted by agents, travelled to Italy, then France, then Belgium until arriving in the UK on 10 August 2017. It was contended, on her behalf, that if she were to be returned to Eritrea she would be persecuted for evading military service or would be forced to carry out military service in circumstances where such would amount to persecution, serious harm or Article 3 ECHR ill-treatment.

3. The central issue for the tribunal, on appeal, was that of the claimant's nationality. As to that, the claimant said that she spoke only a little Tigrinya (a language one would expect an Eritrean national to speak) because she had left Eritrea as a child and because her mother, who used to speak Tigrinya to her, had passed away when she was only seven years old. She said that she speaks Amharic and Arabic (languages one would not necessarily expect an Eritrean national to speak) because of the time she had spent in Sudan where such was spoken. She said that she could remember little of Eritrea because she had left that country as a child.

4. Both the claimant and the Secretary of State were represented before the tribunal. It is clear, from the tribunal's handwritten record of proceedings, that the claimant gave oral evidence and, after examination in chief, was cross-examined. The tribunal concluded that the claimant was not Eritrean and, indeed, although it was not required to do so in order to dispose of the appeal, went on to conclude that she is Ethiopian. The salient part of the tribunal's findings are as follows:

" 25. I am not satisfied that the appellant is Eritrean as she claims. She knows a little bit about Eritrea, but that is not information which she gleaned from her late mother as a child. It is information which she has admitted that she obtained from her Eritrean friends a long time after her mother's death. She claims to understand Tigrinya but not to speak it very well because, after her mother's death, she was surrounded by Amharic and Arabic speakers and not Tigrinya speakers because, although she had Eritrean friends, they too had been in Sudan a long time and did not speak Tigrinya. The letter from Mr Goitom makes no mention of how it is that she communicates with members of the Eritrean Community Group and therefore I cannot be satisfied that she has any knowledge of Tigrinya at all, even though she says that she did interact with Eritreans in Sudan.

26. The burden of proof is upon the appellant and there is no evidence of her Eritrean nationality other than her claim. In her recent statement she states that the knowledge of Eritrea referred to in paragraph 49 of the refusal letter is her own knowledge but in the interview at questions 39 and 52 she said that the knowledge she had displayed in questions 38-53, was obtained from her Eritrean friends. But she could not answer questions about Asmara, (paragraph 39 refusal letter) where she claims to have been born and raised until she was five years old. In her recent statement at paragraph 6, she says that she could not answer those questions because she was only five when she left and how can she be expected to remember all that information. She could not answer those questions because she was not born and raised there and her friends could not give her that information either.

27 I have taken account of the fact that the appellant claims to have been five years old when she arrived in Sudan with her mother, but her inability to converse in Tigrinya even though it was the only language used by her mother until she was seven years old and even though she claims to have associated with other Eritrean

refugees in Sudan, causes me to doubt her claim. Merely reiterating that she is Eritrean is not enough to make her Eritrean. The appellant needs to produce more evidence to substantiate her claim and she has not. I am satisfied that she is not from Eritrea and is, in fact, Ethiopian.”

5. So, the tribunal was concluding that the claimant was seeking to mislead, for immigration purposes, in claiming to be Eritrean. It was concluding, of course, that she is not Eritrean. That was a conclusion which it seems to me the tribunal was entitled to reach (that is to say it was a conclusion open to it on the material in front of it) but that conclusion had to be adequately (though no more) explained as a component of the tribunal’s overall duty to give adequate reasons for its decision.

6. The tribunal was concerned about the claimant not being able to speak much or any Tigrinya. It was right to focus upon that as a potentially significant consideration since most Eritreans do speak that language. But the claimant had given an explanation as to why she did not do so or, at least, did not do so to any significant extent. The explanation was that she had not spoken the language since she was seven years old. That explanation was not so unpersuasive that it did not need addressing. But although it is clear from the above reasoning that the tribunal did not believe the claimant about her nationality, it did not say what it made of that explanation. In my judgment it had to do that before deciding that her inability to speak Tigrinya, or to speak it no more than a very limited extent, was a point which could properly be taken against her in the context of the nationality issue.

7. The claimant was not able to answer questions about Asmara, which is the part of Eritrea she claims to have been born and raised in until her departure from that country. It appears, in looking at paragraph 26 of the written reasons, that the tribunal probably took an adverse credibility point against her in consequence of that inability. But again, the claimant had provided an explanation as to why she would not remember anything about Asmara (her departure at a young age) and it is not clear what the tribunal made of that explanation. Once again, in my judgement, it was necessary for the tribunal to address that explanation and to form a view about it prior to taking a point against her because of it. It did not do that.

8. The claimant, as noted, gave oral evidence to the tribunal. Her oral evidence, and what the tribunal made of it, was potentially significant in this case. But the tribunal did not explain what it made of that oral evidence at all. So, a reader of the written reasons is left uninformed as to, for example, whether it was consistent with written material, whether it was internally consistent or whether it was otherwise persuasive or unpersuasive. Given the absence of wholly determinative documentary evidence it seems to me that the tribunal was required to form a view as to the oral evidence as part of its reasoning process. It did not do that.

9. In the circumstances, whilst the written reasons is a thorough document with respect to the arguments put to it by the representatives, I have concluded that it is unsafe with respect to its assessment of the claimant’s veracity and, hence, the question of her nationality. Legally inadequate reasons have been given for the tribunal’s decision not to accept the claimant’s contentions regarding her nationality. Accordingly, the decision has to be set aside.

10. My having set aside the decision I have decided to remit to the tribunal for a complete rehearing. That was the course of action urged upon me by each representative once I had confirmed that I did propose to set aside the decision. I am not minded to preserve any of the tribunal’s findings so remittal to the tribunal, where matters can effectively restart and be looked at afresh, does seem to be the most appropriate course of action.

11. Finally, the claimant was previously granted anonymity by the tribunal. Nothing was said about anonymity before me but I have decided to maintain the status quo. Accordingly, the claimant continues to have the benefit of a grant of anonymity.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The case is remitted to the First-tier Tribunal for a complete rehearing before a differently constituted tribunal.

Signed: Date: 12 November 2018

Upper Tribunal Judge Hemingway

Anonymity

The First-tier Tribunal granted anonymity to the claimant. I continue that grant under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Court or Tribunal directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the claimant and to the Secretary of State. Failure to comply with this direction could lead to Contempt of Court proceedings.

Signed: Date: 12 November 2018

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

Since no fee has been paid and since no fee is payable, there can be no fee award.

Signed: Date: 12 November 2018

Upper Tribunal Judge Hemingway