Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08081/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 October 2019	**On 23 October 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

MR K K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Stuart King instructed by J D Spicer Zeb Solicitors (83 Kilburn)
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission from the decision of a Judge of the First-tier Tribunal who dismissed his appeal against the Secretary of State's decision of 8 August 2017 refusing his asylum claim.

2. There had been a previous hearing in the First-tier Tribunal in September 2017 but that decision was set aside by the Upper Tribunal in a decision dated 17 April 2018 and remitted to the First-tier Tribunal for a de novo hearing.

3. The appellant claims to be at risk on return to Eritrea, of which country he claims to be a citizen, on the basis of religion and imputed political opinion on account of exiting Eritrea illegally.

4. He claimed to have been born in Eritrea, in Assab, on 5 May 2001. Thereafter he said he left Eritrea illegally in 2004 at the age of 3 as his family could not practise their Pentecostalist religion. They travelled to Sudan and lived there illegally and moved to Addis Ababa in Ethiopia in 2008. Again they lived there illegally.

5. The family returned to live in Sudan in 2013 as life in Ethiopia without status was difficult.

6. In 2016 the appellant returned back to Eritrea with his father. They were both detained on arrival and he was held for just under a month before being released after his uncle paid a bribe. Two days after his release his uncle arranged for him to leave Eritrea illegally via an agent, again to Sudan.

7. Alternative accounts were given including him not having been detained in Eritrea, not having encountered the authorities when entering Eritrea in 2016, having been detained after being encountered at a Pentecostal church and being detained for two days, or alternatively ten days.

8. The judge had a considerable amount of evidence to consider and he set this out at pages 5 to 7 of his decision. The first issue the judge considered was the appellant's claim to have been detained at an Eritrean police station. In a statement of 16 March 2017 it was said he was kept detained separate from his father for just less than one month. However, in response to question 5.4 of the screening interview on 26 June 2017 when he was asked whether he had ever been detained, either in the United Kingdom or any other country for any reason, he replied "no".

9. In his substantive interview this discrepancy was put to him and he said that he had said he was never detained as it was two days but his uncle paid a bribe. He said he was detained when eight or nine of them were praying together and the police came. He said he was not mistreated and nothing else happened during his detention. His uncle arranged his release and he did not know it was by way of a bribe. It was put to him that in his witness statement he had said he had paid a bribe and he said it was possible but he did not remember. At the interview he said he was detained for two to three days. When it was put to him that in his witness statement it was written that he was detained for about a month he said he did not remember that much and it was about ten days.

10. In a later statement he said he could not remember if he was detained on the same day of entry or a few days after as he was very young at the time and believed he was detained for a few days. He said he did not

recall saying one month in his statement and thought he mentioned ten days.

11. At the hearing in cross-examination he said that he had memory loss and it could be between one and ten days that he was in the police station in Eritrea. This it seems was attributed by him to his young age and/or because of mental health issues.

12. The judge bore in mind the fact that the appellant was a child at the time but noted that he was 15 years of age and he would not normally expect such a degree of discrepancy in accounts given as to a period of detention. He did not consider that the inability of the appellant, now 18, to recall and provide a coherent account about a memorable event that happened to him when he was 15 could simply be explained away by pointing out that he was a teenager at the time when it occurred. The judge went on to consider evidence of mental health issues which could account for memory deficiencies. He bore in mind the Joint Presidential Guidance. The report from the health worker dated 26 January 2017 did not identify any physical problems or inability to communicate other than that the appellant seemed a bit unhappy and depressed at times.

13. The judge then considered a letter from Ms Grace Gillman a social worker employed by Enfield Council who considered when she first saw the appellant on 5 January 2017 that his presentation then and for a couple of months after the first meeting was indicative of someone who had experienced trauma or abuse and that he had lasting PTSD as a result of this.

14. The judge noted that Ms Gillman was not called as a witness and that there was no evidence to show that she was qualified to diagnose PTSD.

15. He went on to consider a report from the Tavistock and Portman NHS Foundation Trust, dated 18 September 2017, which was referred to by Ms Gillman. The author of the report was qualified first as a social worker and secondly as a systemic psychotherapist, rather than being a psychiatrist as Ms Gillman had described him. The judge's conclusion on the report of the psychotherapist, Mr Amias, was that it did not state or even give the slightest indication that the appellant was mentally ill or that his experiences in travelling to the UK had traumatised him to such an extent that he was suffering from memory loss or suicidal intent. Nor did the report indicate that the appellant was referred to a GP or a psychiatrist, either during or at the end of the counselling/group therapy sessions which he attended. The judge also considered that Mr Amias constantly strayed outside his role when writing his report, for example with references to the appellant's fears of further incarceration or death being utterly realistic, or the fact that his father was almost certainly still incarcerated or dead.

16. At his asylum interview on 26 June 2017 the appellant said he had never been diagnosed with any medical condition and was receiving no medication and had never tried to harm himself.

17. As a consequence the judge did not find credible the appellant's claim that the major discrepancies regarding a central aspect of his account could be explained due to memory loss caused by trauma. In so finding he took into account that as a young person travelling across North Africa (including Libya) he would have experienced hard times and possibly poor treatment.

18. The judge went on to consider the issue of the appellant's language skills. Both his parents were nationals of Eritrea on his account and his grandparents also. He said that he spoke Amharic and could understand some Tigrinya. He had spent a lot of time in Ethiopia where Amharic is the official language and so it was easy for them to speak to him in Amharic. He said that in Sudan he spent most of his time with Amharic speakers. He said that when they were in Ethiopia life was difficult as they had no status and he began attending a community school run by Eritrean refugees when he was in Sudan.

19. At interview he said that his parents spoke Tigrinya. He was asked why he spoke Amharic and said that the area he lived in in Sudan people used to speak in Amharic. He was asked what language he used to speak with his parents and he said they speak Amharic and also they speak Tigrinya. He said he knew a little bit of Tigrinya.

20. In his statement signed on 12 September 2017 the appellant said he could understand some Tigrinya but did not speak it fluently and he spoke Amharic fluently. He said his parents tried to speak to him in Tigrinya sometimes but he was born in Assab where Amharic is widely spoken. He said that in Ethiopia Amharic is a spoken language and even in Sudan he was always around Amharic speakers. His parents when he was growing up spoke to him in Amharic and sometimes in Tigrinya, he said in his evidence at the hearing.

21. The judge considered the background evidence in this regard. He had not been provided with any independent evidence that Amharic was spoken by indigenous communities in either Sudan or the newly independent state of South Sudan as their first language, although there was reference in evidence to 13,000,000 people speaking Amharic as a second language in Ethiopia and Sudan. The judge noted the appellant's evidence that he lived in Eritrea until the age of 3 and that when in Sudan he had attended a community school run by Eritrean refugees. There was no explanation as to why post-independence a Tigrinya speaking couple living in Eritrea would raise their child to speak Amharic. The judge took judicial note of the fact that by the age of 3, when the appellant said he left Eritrea, a child should already have developed significant language skills with a vocabulary of about 1,000 words. He noted that it was of course the case

that language skills could subsequently be lost, but noted that the appellant's account was that he continued to live with both his Tigrinya speaking parents until 2016 and in those circumstances it was difficult to see why his Tigrinya language skills should have become defunct from lack of use.

22. He considered the explanation given by the appellant to be unlikely where he said that whilst in Sudan all the people used to speak Amharic around him, given the absence of evidence that people in Sudan speak Amharic as their first language. He had not given evidence of precisely where he lived in Sudan in order to be surrounded by Amharic speakers. With regard to the fact that the appellant said that he and his family also lived in Amharic speaking Addis Ababa between the ages of 7 and 12, he had said that during that time they would spend most of their time indoors as they were illegal and therefore he had never claimed to have experienced a wider life in Ethiopia but only a secluded life there. With regard to his claim to have attended a school run by Eritrean refugees on return to Sudan, it was difficult to accept why Eritrean teachers running a school in Sudan, presumably for other Eritreans, would choose Amharic as the language of instruction or that other young Eritrean refugees attending that school who were inevitably all born post-independence would speak that language.

23. The judge considered an expert report from Mr John Campbell and did not consider it to assist greatly. Mr Campbell's central conclusion was that Amharic was widely used in Eritrea, particularly in Assab through the 1980s, and that the appellant's parents might have spoken Amharic as well as Tigrinya. That was not however, the judge commented, an issue in dispute. Furthermore, Mr Campbell's related findings that asylum claimants of mixed Ethiopian and Eritrean heritage might speak Amharic as their first or only language had no relevance to the facts of this case when the appellant's parents and grandparents were Eritrean nationals belonging to the Tigrinya ethnic group and speaking the Tigrinya language.

24. The judge also took into account the statement from Mr Dawit who had a telephone conversation with the appellant on 12 December 2018. Mr Dawit was not an expert witness and had not attended the hearing. Mr Dawit's opinion was that the appellant spoke Tigrinya a little but that his understanding of the Tigrinya language was good and this was a consequence of his response to a majority of Mr Dawit's questions being somehow relevant to the subject matter he had been asked. The judge commented that as the two languages are related it was not surprising that speakers would be mutually intelligible to each other to some degree.

25. Taking the evidence as a whole the judge concluded that the appellant had not shown that he was an Eritrean national. He did not have any documentary evidence that he was an Eritrean national and nor did he speak the Eritrean language of Tigrinya or any other Eritrean language.

The judge found he had not provided any plausible explanation for this and had therefore not discharged the evidential burden of demonstrating that he was an Eritrean national. As a consequence the appeal was dismissed.

26. The appellant sought and was granted permission to appeal to the Upper Tribunal against the judge's decision on the basis first that the judge had failed to have due regard to relevant evidence when assessing the appellant's knowledge of Amharic and Tigrinya, and secondly that he had failed generally to have regard to evidence relevant to the core of the claim when making a holistic assessment of credibility.

27. In her submissions Ms Stuart King adopted and developed the points made in the grounds. She argued the issue of the appellant's nationality had been treated as key. The claim was not solely dependent on an acceptance of what he said as to what caused him to leave. If he had left Eritrea unlawfully or that it was so perceived then he would be at risk regardless of other factors in the case. There was a dispute as to his ability to speak Tigrinya as opposed to speaking Amharic. The judge had addressed the issue of detention in Eritrea and also the language point. There were equally important other elements. Focusing on his account of what happened to him in Eritrea led the judge to focus excessively on that part of his claim.

28. As regards ground 1 a plausible explanation for the appellant's lack of Tigrinya was provided in the expert's report and the appellant's account of how this situation arose. The expert had considered the explanation to be plausible. The judge had not considered that between the ages of 3 and 7 the appellant was associated with other children speaking Amharic and it would have been embedded during that time. His account had been consistent. It was unclear what the judge had made of the expert report and how much he had accepted it. He had rather ignored the conclusion that the account of the appellant was plausible and consistent with the expert's views of the country background situation. The judge had erred in failing to look properly at the appellant's evidence as to his background.

29. As regards ground 2, the judge had focused on a limited aspect, the appellant's detention in Eritrea. It was the case that his evidence on the point had varied in some aspects but, it was argued, not materially with regard to the length of his detention. He was consistent with regard to the events that had occurred. There were so many other aspects of his background in the evidence that the judge had not considered and the grounds referred to this with regard, for example, to the consistency of the evidence that he had given as recorded by Mr Amias and Ms Gillman. The judge had not really considered Ms Gillman's evidence as to what the appellant had said about his background and there was the point about the views of the Eritrean foster family. He had provided a consistent presentation since arriving in the United Kingdom with being from an Eritrean background. There was also the evidence of Helen Tadese.

Written evidence had to be given some weight and the judge said it was given limited value but it did not form part of his reasoning. The analysis about detention had been at the expense of a holistic consideration of the case, including the positive matters and it was unreasonably limited to one point.

30. In his submissions Mr Lindsay argued that the judge had considered the evidence carefully and thoroughly. The appeal had been dismissed because of inconsistencies with regard to key aspects of the claim and a lack of a credible explanation for the failure to speak Tigrinya. The judge was not obliged to give reasons for reasons or to refer to every bit of evidence. He had done as much as he could reasonably be expected to do. He was entitled to conclude as he did about the extent to which the appellant up to the age of 3 would have had a foundation in Tigrinya and there was no challenge to that finding. With regard to not considering the next years, in fact the judge had noted that the language skills could be lost and considered whether there was a credible explanation for losing the language skills he should have acquired. The decision was properly reasoned.

31. With regard to ground 2 the judge was not required to refer to all the evidence in the appeal and he had referred to the main evidence and matters of weight were for him.

32. By way of reply Ms Stuart King referred again to the plausibility conclusion of the expert with regards to the appellant's explanation as to why he had little Tigrinya. According to Mr Dawit the appellant could get by in Tigrinya. The background evidence did not support what the judge had found to be the case. Though it was true that the judge did not have to mention every bit of the evidence, he needed to make it clear to the appellant why he had lost and it left open the question of why he did not accept Grace Gillman's evidence and the consistency of his accounts and the evidence of Ms Tadese. These matters needed to be placed in the balance against the negative findings and the judge was guilty of "cherry picking". There was no reasoning with regard to evidence which assisted the appellant.

33. I reserved my decision.

34. The judge considered the evidence, of which there was a lot, in considerable detail. The first issue which he considered in particular detail was that of the appellant's claimed detention at an Eritrean police station. He had provided various time periods for that detention ranging between two days and about a month. He was unable to give a satisfactory explanation for that discrepancy. The judge considered in detail whether it could be explained by either his age or health issues and came to the entirely rational conclusion that neither of those could explain it and this went to a core issue of the claim. It was fully open to the judge to consider that major discrepancies regarding an essential issue of the

account not having been properly explained he did not accept the appellant's claim of detention at an Eritrean police station.

35. The judge then went on to consider, again in considerable detail, the reasons why the appellant spoke little Tigrinya. His conclusion that he would have already developed significant language skills by the age of 3 was unchallenged. He accepted that language skills could subsequently be lost but he was living with both of his Tigrinya speaking parents until 2016, he had attended a school run by Eritrean refugees on return to Sudan and there was no reason why they would not have spoken Tigrinya rather than Amharic, and there was no evidence before the judge that people in Sudan spoke Amharic as their first language. As regards the time spent living in Ethiopia, the family had spent most of their time indoors as they were illegal and therefore he had not experienced a wider life while in Ethiopia.

36. The judge specifically considered the report of Mr Campbell but did not consider that it greatly assisted the appellant. He accepted, and it was indeed not an issue in dispute, that the appellant's parents might have spoken Amharic as well as Tigrinya, and as regards the likelihood of asylum claimants of mixed Ethiopian and Eritrean heritage speaking Amharic as their first or only language, it was of course the case that on both sides of the appellant's family, including parents and grandparents, all were Tigrinyan and therefore that piece of evidence would not apply. The judge also came to conclusions to which he was entitled to come on Mr Dawit's evidence that the appellant was able to make a response to questions which were somehow relevant to the subject matter asked, bearing in mind the relationship between Amharic and Tigrinya. It was also open to the judge to attach limited weight only to the evidence of Helen Tadese who did not attend the hearing to be cross-examined. Her evidence was that she knew the appellant to be Eritrean but the judge was entitled in the circumstances of her absence to attach the limited weight that he did to her evidence. I also consider that appropriate consideration was given to the evidence of Ms Gillman, which was noted and considered at paragraph 27 and again at paragraph 41. Matters of weight are of course a matter for the judge. In my view it cannot properly be said that the appellant could not know the reasons why his appeal was dismissed. The judge made it very clear why on the one hand he considered that the appellant's credibility was significantly damaged by the discrepancies about the period of detention, and why it was that he did not accept that the appellant was Eritrean given the lack of credible reasons for his very limited ability only in Tigrinya.

Notice of Decision

37. No error of law in this decision has been made out and as a consequence the appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant 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 appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 17 October 2019
Upper Tribunal Judge Allen