Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13185/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons Promulgated**
On 22 January 2019	**On 08 February 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JACOB ADAM
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Davison instructed by Ison Harrison Solicitors.
For the Respondent: Mrs Pettersen Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge M Davies promulgated on 6 February 2018 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant claimed to be a citizen of Eritrea who was entitled to a grant of international protection. The claim was rejected by the respondent who believed the appellant to be a national of Ethiopia. The appellant's claim is that he left Eritrea at the age of 4 and travel to Ethiopia with his parents. He left Ethiopia on 16 July 2017 by plane, claiming asylum in the United Kingdom on arrival.
3. Having considered the appellant's and respondent's case the Judge sets out his findings of fact from [58] of the decision under challenge; noting that if the appellant was credible in his claim to be a national of Eritrea then he was entitled to a grant of international protection.
4. The Judge notes what are described as a number of factors in the appellant's favour set out at [59] of the decision but also notes a number of other factors which are said to count against the appellant which are set out at [61 – 69], leading to the core findings at [70 – 73] in the following terms:

> 70. It does not appear to me to be reasonably likely that if the officials at the Ethiopian Embassy had been aware that the Appellant lived in Ethiopia for 14 years and had married an Ethiopian national that they would dismiss the Appellant's attempts to obtain their assistance in the manner that the Appellant has claimed. As stated, the fact that no further attempts were made to obtain information from the Ethiopian authority have not assisted the Appellant.
>
> 71. I therefore conclude that the Appellant has not made a genuine attempt to establish with the Ethiopian authorities in the United Kingdom that he is not entitled to Ethiopian nationality.
>
> 72. To summarise, on the basis of what I have stated above I find it reasonably likely that the Appellant is a national of Ethiopia and not a national of Eritrea as claimed and that he is not entitled to international protection.
>
> My Decision
>
> 73. The Appellant cannot discharge the burden of proof upon him to satisfy me that there is a serious possibility or reasonable chance if he is returned to Ethiopia that he will or may be persecuted for a Convention reason. He cannot be returned to Eritrea as he is not a national of that country. His appeal is dismissed on asylum grounds. Applying the same standard of proof his appeal is dismissed on human rights grounds.

5. Permission to appeal was refused by another judge of the First-Tier Tribunal who found the grounds amounted to nothing more than disagreement with the findings of Judge Davis. The appellant renewed the application resulting in permission being granted by a judge of the Upper Tribunal, the operative parts of the grant being in the following terms:

> In his witness statement, dated 25 August 2017, the Appellant explained that he was enrolled in a school by a friend of his mother's and that he and his mother were not able to rent their own home in Ethiopia. He also said that they attended a variety of churches as they were afraid that their Eritrean identity would be discovered. The First-Tier Tribunal Judge did not refer to any of this evidence or make any findings on it.
>
> In addition, he did not refer to the contents of the Appellant's witness statement, dated 12 January 2018, which addressed the points made in the Respondent's refusal letter.
>
> The Judge did not give sufficient weight to the reasons given by the Eritrean Community in Lambeth for concluding that the Appellant was Eritrean or any reasons for disputing these reasons.
>
> As a consequence, First-Tier Tribunal Judge Davies' decision contains arguable errors of law and it is appropriate to grant permission to appeal.

Error of law

6. The Judge took into account the appellant's case stating at [27] that the basis of the case is set out in the Notice on Grounds of Appeal. The Judge confirms he has taken into account all the evidence submitted by the appellant's representatives with their letter of 16 January 2018 and has read and considered both the appellant's screening and substantive interviews and taken into account the evidence contained in the appellants two witness statements and the evidence he gave at the hearing; including submissions made by the appellant's representative. The Judge confirms the witness statements were adopted by the appellant in his oral evidence [29].
7. It cannot necessarily be inferred from the fact that a relevant point is not expressly mentioned that it had not been taken into account by the Judge. I find it clear from the decision that the Judge had in mind the relevant legal principles, and it has not been made out that the Judge did not apply them appropriately.
8. In relation to the visit to the Embassy, the grounds assert the Judge erred as when finding at [70] that no further attempt had been made to obtain information from the Ethiopian Embassy. The appellant asserts that in his bundle at page A14 is a copy of a letter sent by his solicitors to the Ethiopian Embassy in London dated 12 January 2018 referring to the client by name and advising the Embassy that they seek their assistance to establish his right to Ethiopian citizenship or residence in the absence of a formal identity document. The letter notes in the 5th paragraph "We understand that our client attended your embassy in person on 10th January, but that he was unable to speak directly to a member of staff, without proof of his Ethiopian identity (which he does not possess)". The solicitors requested an appointment for their client to attend the Embassy again this time to discuss what steps he can possibly take to establish is right to Ethiopian citizenship and residence and to obtain the relevant documentation as proof of that right. Although the letter requested a

response before 19th January, the hearing before the Judge taking place on 22 January 2018, this does not establish arguable legal error in the finding of the Judge. The appellant was seeking an application for Eritrean identity in relation to which the website clearly states that 'all applications must be made in person at the Embassy as you will be required to provide fingerprints to prove nationality'. The Judge was also arguably correct in finding that the appellant had not made a genuine attempt to establish with the Ethiopian authorities that he is not entitled to Ethiopian nationality for, although he appears to have been frustrated by necessary procedure, it does not appear he has been able to speak to an official at the Embassy or provide fingerprints or other documentation that they require. The finding of the Judge that it had not been established that the appellant will not be granted or recognised as an Ethiopian citizen is therefore arguably correct. It is not made out that the fact there had been no response from the Embassy before the hearing is indicative of a refusal to recognise the appellant. The time between the solicitor's letter and date of hearing is relatively short and there was no evidence that a reply would have been made before the hearing. No evidence was provided at the Initial hearing that took this issue any further.

9. The claim in the grounds the Judge applied the wrong standard of proof has no arguable merit. It is clear from reading the determination that the Judge applied the lower standard. The assertion the Judge inverted the applicable standard has no arguable merit and is not made out having read the determination and available evidence.

10. Having considered the evidence with the required degree of anxious scrutiny I find the Judge gives adequate reasons in support the findings made. A reader of the decision can clearly understand why the Judge concluded as he did. There is no arguable merit in Ground 2 suggesting otherwise.

11. The appellant fails to establish the conclusions of the Judge are irrational or outside the range of findings reasonably open to the Judge on the evidence. Disagreement with the findings does not establish irrationality.

12. The challenge to the Judge's findings at [65 – 66] that he understood from the appellant's own evidence that he and his mother lived in Addis Ababa without difficulty, whereas the appellant claims that he and his mother were unable to rent property, would face problems if encountered by the police, had to register to attend school under a false identity, was unable to apply for identity documents, was unable to register his marriage, and lived in constant fear of deportation, is noted. The Judge rejects as not credible the appellant's claim to have married his wife at home and that their marriage was not registered by the Ethiopian authorities at [64]. The decision has to be read as a whole to understand the Judge's basis for making the statement that the appellant and his mother were able to live in Ethiopian without difficulty. The Judge notes at [65] that no steps were taken to remove them to Eritrea or place them in a refugee camp which the country information indicates are the actions normally taken of the authorities

if they encounter those with no right to remain in Ethiopia. Even if the appellant and his mother experience some difficulties it is clear that they are able to stay in Ethiopia for a number of years, in relation to the appellant some 16 years [61] attend education for which appropriate evidence must have been provided to the authorities, without evidence of the type of difficulties those without status would ordinarily be able to rely upon in their evidence.

13. So far as the Eritrean Community in Lambert are concerned, the Judge specifically refers to their letter at [68] accepting that the appellant was questioned in some detail about his knowledge of Eritrea, but failing to understand on what basis the author of the letter stated categorically that the appellant is an Eritrean national as the letter contains no details regarding enquiries made, what elders they spoke to and what those elders said to indicate what the appellant's nationality was. The Judge noted that the author of the letter could have provided a witness statement or attended court to give oral evidence, which is a factually correct statement. The Judge does not reject this evidence because it is not corroborated but clearly states that had it been corroborated it may have warranted greater weight being given to it. The reason the Judge gives less weight is clearly set out at [69]; that the evidence in the letter is vague and the sources for the conclusions are not clearly set out and specified. This evidence was clearly considered by the Judge and the weight to be given to that evidence was a matter for him.

14. The grounds fail to establish arguable legal error material to the decision to dismiss the appeal. Whilst the appellant disagrees with the outcome and seeks more favourable findings that is not the required test. It is not made out the conclusions reached are not within the range of those reasonably available to the Judge. It is not made out the weight given to the evidence is in any way arguably irrational or not warranted on the evidence.

15. No arguable legal error material to the decision to dismiss the appeal is made out sufficient to warrant the Upper Tribunal interfering any further in this appeal.

Decision

16. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

17. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 23 January 2019