IAC-AH-KRL-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/04332/2017

**THE IMMIGRATION ACTS**

| **Heard at Birmingham** | **Decision & Reasons Promulgated** |
|---|---|
| **On 6 January 2020** | **On 16 January 2020** |

**Before**

**DR H H STOREY**
**JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MS H D**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Fraczyk of Counsel, instructed by Halliday Reeves Law Firm
For the Respondent: Ms H Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant who claims to be a national of Eritrea has permission to challenge the decision of Judge Hall of the First-tier Tribunal sent on 17 September 2019 refusing her appeal against the decision of the

respondent dated 25 April 2017 refusing her protection claim. In common with the respondent, the judge did not accept that the appellant was a national of Eritrea. The judge stated that if he had been satisfied the appellant was a national of Eritrea it was common ground that the appeal of the appellant would stand to be allowed. In this connection the judge found that the appellant was a Pentecostal Christian and was of conscription age. In finding that the appellant had not given a credible account of her nationality, the judge placed particular reliance on inconsistencies in her evidence. The judge considered that she had given two different accounts, one being that following receipt of a deportation order when in Ethiopia she travelled by bus to meet with her aunt outside Addis Ababa and the other account being that her aunt was present when the deportation order was received and they left together. The judge also considered there was an inconsistency in the appellant's evidence as set out in her witness statement and in the evidence she had given to the previous Tribunal judge regarding whether her father and aunt had agreed that she would go to Sudan. The judge also considered inconsistent the appellant's evidence regarding whether she was present when her father was being deported and implausible her account of her father being an Eritrean national yet choosing to remain living in Addis Ababa until 2000 albeit travelling frequently to Eritrea as part of his occupation as a lorry driver. The judge also considered that the appellant had failed to explain why she had not sought to make contact with her aunt who helped her escape or any members of her family.

2. Two grounds were advanced by the appellant. First of all it was contended that the judge had been procedurally unfair in failing to put apparent discrepancies in the appellant's evidence to her which had not formed part of the respondent's case at the de novo hearing. This meant, it was submitted, that the appellant had been deprived of the opportunity of addressing the alleged inconsistency in circumstances where there was no reliance placed on this issued by the respondent. Issue was also taken with the judge relying on evidence the appellant had given at a previous hearing. It was said that this failure on the part of the judge was compounded by the fact that the discrepancy was not part of the case highlighted against the appellant and did not arise as a result of the evidence taken at the hearing. The second ground contended that the judge had failed to give adequate reasons for finding that the expert report from Dr Allo dated 18 August 2019 did not assist the appellant in establishing her Eritrean nationality. It was contended that the judge had placed no reliance on this report simply on the basis of a minor error on the part of the expert in stating that the appellant's mother had voted in the 1993 referendum when in fact she was already deceased at that time. It was submitted that having accepted the validity of the conclusions reached by the report at paragraph 47 of the determination, the judge seemingly ignored it when addressing the reasons why the appellant had limited personal knowledge about Eritrea and also why (contrary to the respondent's presumption) the appellant's father would not necessarily

have taught the appellant either the Tigrinya language or about the ethnic group itself.

3. I heard submissions from both Mr Fraczyk and Ms Aboni. Ms Aboni said that the respondent now accepted that the judge had materially erred in law in failing to put discrepancies that had not been identified previously.

4. Having heard submissions from both representatives, I am satisfied that the judge did materially err in law. That is not because I see any difficulty with the judge relying in paragraph 55 on a recording of the appellant's evidence from the previous hearing before Judge Parkes on 14 May 2018 that she and her father received a deportation order in the evening and her father, aunt and maid were in the house. The issue of whether or not at the time when the appellant's father received the deportation order the aunt and the appellant were present with him was one that was raised by the respondent in the Reasons for Refusal Letter: see paragraph 12. Hence in relation to that issue the appellant was on notice of the need to provide a satisfactory explanation for the discrepancy in her evidence. However it is not evident from perusal of the record of proceedings that the different inconsistencies relied on by the judge in paragraphs 57 to 58 were put to the appellant. Accordingly I consider ground 1 to be made out.

5. As regards ground 2, I also consider that the judge's treatment of the expert report was flawed. At paragraph 38 the judge appeared to consider the expert report reliable. At paragraph 47 the judge said that he had considered the expert report in detail and he agreed with the conclusion at paragraph 38 that it is plausible for the appellant to be of Eritrean nationality without necessarily speaking the Tigrinya language or despite speaking the Amharic language. In light of that positive finding in relation to the expert report, the judge's assessment at paragraph 64 that the expert report did not assist the appellant in proving that she is Eritrean, is deficient. The only reason given for rejecting the report in full was that the expert had found that the appellant's parents voted for Eritrean independence in 1993 and had accepted Eritrean nationality and therefore were deemed to have renounced their Ethiopian nationality, whereas the judge said that could not be the case because the appellant's mother died in 1983. However, irrespective of what the appellant's mother did, if the appellant's father had voted for Eritrean independence in 1993 and accepted Eritrean nationality, as was the view of the expert, the expert's error in relation to the mother did not undermine the conclusion of the expert. Accordingly, I consider that ground 2 is also made out.

6. In light of the nature of the judge's errors I consider it appropriate to remit this case to the First-tier Tribunal, not before Judge Hall. It being accepted by the respondent that if the appellant is a national of Eritrea she is entitled to succeed in her protection claim, the only remaining issue is a limited one, namely whether or not the appellant is a national of

Eritrea. It is nevertheless one on which there will need to be an assessment of the appellant's evidence de novo.

7. I would add one observation. It appears to be the reasoning of the respondent in the Reasons for Refusal Letter that the appellant is to be considered a national of Ethiopia because she has the opportunity to acquire that nationality. However as a matter of nationality law, a decision on whether an appellant is a national or not must be made on the basis of present nationality. If the respondent's position is simply that the appellant has an opportunity or an entitlement to apply for Ethiopian nationality through some national procedure, then that does not establish for the purposes of the Refugee Convention that the appellant is a national of Ethiopia. However it is not necessarily the case that this assists the appellant because on one view of the evidence she would be entitled by operation of law, ex lege, to Ethiopian nationality and therefore, whether or not she applies for it would be immaterial to whether she possessed that nationality. In order to examine the nationality issue further, the next Tribunal will need to consider not only the expert report but also the background country materials relied on by the respondent.

8. To conclude the decision of the First-tier Judge is set aside for material error of law. The decision is remitted to the First-tier Tribunal, not before Judge Hall or Judge Parkes.

**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 their 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: 15 January 2020

H H Storey

Dr H H Storey
Judge of the Upper Tribunal