Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: LP/00122/2020

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 9 September 2021	**On 18 October 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

A F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Bayoumi, instructed by Fountain Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

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Introduction

2. The appellant claims to be a citizen of Eritrea who was born on 20 May 1996. He claims that he fled Eritrea to live in Sudan when he was around 4 years of age. He claims to have lived in Sudan for approximately fourteen years before coming to the UK where he arrived clandestinely on 7 September 2017.

3. On 7 September 2017, the appellant claimed asylum. In a decision dated 23 December 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR. In particular, in relation to the appellant's international protection claim, the Secretary of State did not accept that the appellant was a national of Eritrea but, instead, concluded that he was a national of Ethiopia.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge G Wilson on 26 November and 18 December 2020. In those proceedings, it was accepted that if the appellant was, indeed, an Eritrean national then he was at risk on return and was entitled to asylum. However, the Secretary of State maintained the position taken in her decision that the appellant was not a citizen of Eritrea but was, instead, a citizen of Ethiopia.

5. In his detailed and careful determination, Judge Wilson considered the evidence relevant to the appellant's claimed nationality and his credibility (at [5]-[69]). He considered:

> (a) the appellant's spoken language and whether that was consistent with his claimed nationality (see [5]-[10]);
>
> (b) the appellant's knowledge of Eritrea (see [10]-[15]);
>
> (c) whether the appellant spoke the language of Sudan where he claimed to have lived for 14 years (see [16]-[23]);
>
> (d) the appellant's knowledge of Sudan (see [24]-[27]);
>
> (e) the appellant's knowledge of major events in Khartoum, where he claimed to live, and in Sudan (see [28]-[38]);
>
> (f) the credibility of the appellant's account to have been of interest to the Eritrean authorities and detained in Khartoum (see [39]-[45]);
>
> (g) the credibility of his evidence concerning his education (see [46]-[47]);
>
> (h) the credibility of his evidence concerning the nationality of his father's friend (see [48]-[50]);
>
> (i) the reliability of his identification documents (see [51]-[52]);

(j) the evidence of two witnesses whom the appellant met in Sudan and whom he had told he was Eritrean (see [53]-[56]);

(k) the credibility of the appellant's evidence that he had lost contact with his family (see [57]-[60]);

(l) the appellant's failure to substantiate his claim (see [61]-[66]); and

(m) the appellant's failure to pursue or claim asylum in other safe countries (see [67]-[69]).

6. Having carried out that very detailed assessment of the evidence, Judge Wilson summarised his reasons and conclusion for finding that the appellant's account was not credible and to reject his claimed nationality at paras [70]-[73]. He found a number of aspects of the evidence supportive, or at least not damaging of, the appellant's claimed nationality (at [71] and [72]) but other aspects were damaging (at [73]).

> "70. I remind myself of the lower standard of proof that applies in this appeal [RM (Sierra Leone) 2015 EWCA Civ 541].
>
> 71. I have found there is support within the objective evidence that in the appellant's claimed language of Assab, Amharic was used as a first language. I have found that the appellant has provided a plausible explanation as to why he claims to be a national of Eritrea but nonetheless speaks Amharic as his first language. I have found that the language of Eritrea displayed by the appellant at interview is consistent with the claim that he is of Eritrean origin and spent his formative years within an Eritrean community Sudan. I have found that the appellant's knowledge of Sudan/Khartoum is consistent with the appellant's claim that he spent a period of time within Khartoum. I have found the appellant's witnesses to be credible and I place weight on their evidence in respect of their first-hand experience of the appellant in Sudan. These factors weigh in favour of the credibility of the appellant's account and his claimed nationality.
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> 72. For the reasons set out above, I have not taken the appellant's claimed lack of knowledge of major events in Khartoum/Sudan or the appellant's attendance at an Ethiopian school against the appellant.
>
> 73. However, the appellant's witness's knowledge of the appellant's nationality is based on what the appellant has told them and this reduces the weight that I place on this element of their evidence. In addition, I have found the appellant's account contains elements that are inconsistent, implausible and incoherent. These include the appellant's inability to speak Arabic proficiently despite residing in Sudan for a claimed period of 14 years and being employed by a Sudanese employer; securing release from detention by payment of a bribe despite the claimed interests of Eritrean authorities; the appellant's decision to remain in his home area notwithstanding his claimed belief that the Eritrean authorities were searching for him and had either detained him themselves (or had used Sudanese authorities to detain him) for the purposes of return; discrepant evidence as to the age at which he left school; discrepant evidence as to the nationality of his father's friend who had cared for the appellant for 14 years, discrepant evidence as to the existence of an identification card and a lack of any meaningful searches to establish contact with his family despite the appellant's claimed precarious circumstances. I have

> also found that the appellant has failed to take reasonable steps to establish he was not Ethiopian; has failed to demonstrate that it is outside of his power to obtain documents that would substantiate his claim and has failed to pursue an appeal against his asylum refusal in Switzerland or claim asylum in other safe countries which I have found damage his credibility. I find that these factors are determinative. For all these reasons, I find that the appellant has failed to demonstrate to the lower standard of proof, that he is an Eritrean national who is of interest to the Eritrean authorities in the manner that he describes or at all."

7. As can be seen, the judge accepted some aspects of the evidence supported the appellant's claim to be an Eritrean national but that other aspects did not. Overall, the judge's conclusion was the appellant had not established his claimed nationality to the lower standard applicable in international protection cases.

Discussion

8. Permission to appeal was granted by UTJ Blundell, on renewal to the UT, on 3 March 2021.

9. The grounds of appeal concisely challenge one aspect of the judge's analysis. This concerns his assessment of the evidence of the two witnesses whom the appellant claimed he had met in Sudan and to whom he had said he was Eritrean.

10. The judge summarised the evidence of the two witnesses, whom I shall refer to for the purposes of anonymity as "Mr K" and "Mr S", at paras [54]-[55] as follows:

> "54. In his witness statement Mr [K] asserts that he is Eritrean. Mr [K] asserts that he moved from Eritrea to Ethiopia when he was young and subsequently moved from Ethiopia to Sudan where he lived with his relatives. Mr [K] asserts that he met the appellant in or around 2012/2013. Mr [K] describes a tightknit community. Mr [K] asserts that the appellant was from Deme which was close to Mr [K]'s home area of Safar Shariekh. Mr [K] asserts that the appellant 'told me he was from Eritrea. I couldn't think of any reason why he had to lie.'. Mr [K]'s evidence, undisputed by the respondent, is that his asylum claim, on the grounds that Mr [K] was Eritrean was originally refused by the Home Office but he was subsequently successful at his First-tier Tribunal appeal. Mr [K] [then] states that he believes that the appellant is a national of Eritrea. Prior to the second hearing the appellant's representatives produced a map of the appellant's claimed home area. At the hearing Mr [K] was cross-examined extensively as to the geography of Khartoum and the appellants *(sic)* home area. The evidence given by Mr [K] was consistent with the map produced by the appellant. Under cross-examination Mr [K] gave internally consistent evidence he had met the appellant in Sudan in or around 2013 and the appellant told him he was Eritrean.
>
> 55. In his witness statement Mr [S] asserts that he is a national of Eritrea. Mr [S] asserts that his asylum claim, based in part upon being a national of Eritrea, was accepted by the Home Office on 18 March 2019. In his witness statement Mr [S] describes meeting the appellant in 2010 when the appellant was working in a mobile telephone shop. Mr [S] describes the appellant as an 'Abasha' person which he asserts is a name that Sudanese people give to Eritrean and Ethiopian people. Mr [S] asserted that the appellant had told him that the appellant was Eritrean [ ] whilst they were in Sudan. Mr [S] described how he became reunited with the appellant through a chance encounter in a restaurant in Cardiff. Under cross-examination the witness gave consistent evidence, and particularly first

> encountered the appellant in 2010 in a mobile telephone shop where the appellant worked."

11. The grounds challenge the judge's reasoning set out in para [56] where he said this:

> "Both witnesses gave their evidence in an open and instructive manner, they attempted to answer each of the questions put to them as fully as possible. The witnesses' evidence remained internally consistent under cross-examination. The witnesses have been found credible by the First-tier Tribunal and the respondent respectively. For all these reasons, I find the witnesses to be credible and I place weight on their evidence in respect of their first-hand experience's *(sic)* with the appellant in Sudan. However, their knowledge of the appellant's nationality is based on what the appellant has told them and this reduces the weight that I place on this element of their evidence."

12. The grounds contend, and these were adopted by Ms Bayoumi in her oral submissions, that the judge failed properly to give weight to the evidence of the two witnesses that the appellant had told them that he was an Eritrean national and he failed to consider why, if he did not accept the truth of what the appellant had told them, what if any, reason the appellant might have for not telling them the truth given the circumstances in which he told them he was Eritrean.

13. In her submissions, Ms Bayoumi submitted that weight should have been attached to their evidence that they believed, on the basis of what they had seen and what the appellant had said, that he was Eritrean. She referred me to the witness statement of Mr K at [88] and [14] and of Mr S at [7], [8] and [12].

14. In his submissions, Mr Howells adopted the rule 24 reply. He submitted that the judge had properly assessed the appellant's credibility in detail and in reaching his conclusions at paras [71]-[73]. The judge had accepted that both witnesses had said that they had no reason to believe he would lie to them but the judge could not speculate why it was that the appellant might or might not say that he was Eritrean whilst in Sudan. Mr Howells submitted that there was no background evidence to assist the judge in determining whether there was good reason for the appellant (erroneously) to claim whilst in Sudan that he was Eritrean.

15. Despite the clarity and concision of Ms Bayoumi's argument, I am not persuaded by it that the judge erred in law in the specific manner set out in the grounds.

16. It is not suggested that the judge failed properly to summarise the evidence of both Mr K and Mr S as set out in their witness statements to which Ms Bayoumi referred me. The judge drew a distinction between the evidence of both witnesses as to what they had "first-hand experience" of the appellant in Sudan and their evidence that the appellant had told them that he was Eritrean. The judge accepted both strands of evidence in the sense that he accepted what the witnesses said about their experiences of meeting the appellant in Sudan and that the appellant had told them that he was Eritrean. However, of course, the second strand of evidence was simply to repeat what the appellant had said was his nationality. The weight to be given to this evidence, in particular as to whether it assisted to establish the truth of the appellant's claim that he is, in fact, Eritrean was a matter for the judge subject to the

constraints of rationality and reasonableness. The judge did not doubt that the witnesses believed that the appellant was Eritrean but that did not establish that he was Eritrean. Theirs was not expert evidence but personal opinion. Both witnesses said that they knew of no reason why he would lie. However, if the judge was being asked to assess whether the appellant had any good reason to lie about this given the circumstances in which he told the witnesses that he was Eritrean in Sudan, the judge would have been required to speculate about good or bad reasons why the appellant said what he said. There was no external or background evidence before the judge to make that assessment.

17. The judge was, in my judgment, entitled to give reduced weight to this element of the witnesses' evidence because, on this issue, they were simply repeating what the appellant had said to them and which was self-serving. That aspect of their evidence had to be given, as the judge was entitled to conclude, some weight but not inevitable the same weight as if it originated from an independent source or was otherwise verifiable.

18. In truth, the very careful and thorough decision demonstrates, the judge fully took into account a range of issues raised by the evidence, some of which supported his claimed nationality and some of which did not. Those were summarised at paras [71]-[73] of his determination. Apart from this one issue, the grounds do not challenge any of the judge's other reasoning. In my judgment, the judge did not fall into error in his treatment of the one aspect of the two witnesses' evidence as to what the appellant had told them, but if he had any error was not material to his overall assessment and reasoning in paras [71]-[73] which led him to conclude that the appellant had failed to establish on the lower standard of proof that he was an Eritrean national.

19. For these reasons, the judge did not materially err in law in dismissing the appellant's appeal.

Decision

20. For the above reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal on all grounds did not involve the making of an error of law. The decision, therefore, stands.

21. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
16 September 2021

TO THE RESPONDENT
FEE AWARD

Judge Wilson made no fee award as the appellant had not succeeded in his appeal. That decision stands.

Signed

Andrew Grubb

Judge of the Upper Tribunal
16 September 2021