IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004894
First-tier Tribunal No:
PA/55079/2021
LP/00118/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TT
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ul-Haq instructed by J M Wilson Solicitors.
For the Respondent: Mr P Lawson, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 4 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Parkes ('the Judge') promulgating following a hearing at Birmingham on 23 May 2022, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection and on human rights grounds, made by way of further submissions, on 27th January 2021.

2. The appellant claimed to be a citizen of Eritrea born on 1 January 1999. The Secretary of State's position has always been that he is a national of Ethiopia.
3. The Judge noted a previous determination of First-tier Tribunal Judge Astle ('Judge Astle'), promulgated on 10 May 2017, who found the appellant was born on 1 January 1996 and that his claim for international protection was not credible.
4. The Judge sets out his findings of fact from [14] of the decision under challenge. The Judge correctly applied the Devaseelan principles, namely that he was not bound by the earlier decision if there was sufficient evidence to warrant departing from it.
5. The Judge noted that the "new evidence" relied upon by the appellant was a birth certificate, largely written in English with a script in a different language, which had been considered by the appellant's country expert Dr Allo. The Judge noted Dr Allo did not suggest that this is an unusual format for such documents although the Judge was unable to determine whether the document handed in at the hearing was the original as it appeared to be a copy [16].
6. The Judge found the appellant's account of how the document was obtained to be "vague and makes little sense" [17].
7. In relation to the date of birth appearing on the birth certificate, the Judge notes that the appellant had given a date of birth of 19 January 2019 but then accepted the later date set by social services and could not explain where the original date came from or why he has repeated the age it would make him. The Judge noted the date given on the birth certificate now produce was 1 January 1996, the same as that arrived at independently by social services in their age assessment when he first arrived in the UK [19 – 21].
8. At [22] the Judge writes:

> 22. I am not satisfied that the items provided at the hearing included an original document and the account of how it was obtained and sent is lacking important supporting details. The fact that the date of birth matches that assessed by social services suggests some contact between the Appellant and Eritrea which has not been explained. The reliance on a document that is not reliable undermines the claim about the issue it is intended to support. I bear in mind the observation of Dr Allo about the availability of fraudulent documents, whether as to their contents or nature. In the circumstances I am not prepared to accept that the birth certificate is a reliable document.

9. As [24] the Judge refers to the content of Dr Allo's report in relation to the appellant's language ability.
10. Taking the evidence overall, the Judge was not satisfied that the new evidence relied upon justified departing from the findings of Judge Astle and found the position remained that the appellant had not shown that he is an Eritrean citizen. The Judge finds it more likely the appellant is Ethiopian, and as the basis of his claim was real risk if returned to Eritrea, finds that any risk is not likely to occur and that the claim had not been made out.
11. The Judge finds no very significant obstacles to reintegration as required by paragraph 276 ADE or anything to warrant a grant of leave outside the Immigration Rules at [28].
12. The appellant sought permission to appeal which is granted on a renewed application by Upper Tribunal Judge Keith on 23 November 2022, limited to grounds 4(ii), 5 and 6 of the grounds seeking permission to appeal.
13. The appeal was opposed by the Secretary of State in a Rule 24 response dated 16 December 2022 in the following terms:

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
3. The Grant of Permission by the UT is limited to Grounds 4(ii), 5 & 6 only.
4. GoA4(ii) - the SSHD contends that the FTTJ did assess the birth certificate (which was the principal 'document' an expert report being a 'report') in conjunction with the expert evidence not separate from it [23- 'I accept that Dr Allo's view is that the Appellant's claim to be Eritrean is plausible'] & notably and unambiguously stating 'Taking the evidence overall' [25]. Credibility is always a matter for the Tribunal and the FTTJ gave cogent reasons for rejecting the same [22-25].
5. GoA5- 276ADE (vi)- the FTTJ was clearly aware of the limited period of time spent by the Adult Appellant outside of his home country having only entered the UK clandestinely in April 2016 when aged 20yrs old (the dob of 1.1.1996 seemingly now accepted [21]). The grounds raise no assertion or reasons why the Appellant would face 'very significant obstacles' to reintegration in their home country (likely Ethiopia).
6. GoA6- Art 8 proportionality – likewise given illegal entry to UK April 2016 and precarious status thereafter the grounds point to no evidence capable of leading to a rationale finding that removal of this failed asylum seeker would be disproportionate? Grounds 5/6 amount to challenges of style over substance and fail to disclose material error. The findings at [25-28] are sufficiently reasoned on the evidence (or lack thereof) given this was an appeal to which Devaseelan applied. The s117B factors clearly either being neutral or weighing against the Appellant in a proportionality assessment.

Discussion and analysis

14. In his submissions Mr Ul-Haq referred to the issue of language being of concern and that the country expert, Dr Allo, had gone into this issue in some depth. It was submitted the Judge should have consider the same holistically together with the other evidence, especially as the expert report was supported by the appellant's statement. It was submitted the Judge had erred in law as the expert report together with the appellant's witness statement was sufficient to prove the appellant's claim in relation to his nationality as a citizen of Eritrea.
15. It was submitted there was a plethora of evidence before the Judge relating to the language issue and that the Judge was required to undertake a holistic analysis of the same before coming to his conclusions. It is argued that the language evidence and witness statements were sufficient to highlight that the Judges conclusions in relation to language are irrational.
16. In relation to grounds 5 and 6, it was asserted the appellant provided a witness statement which was supported by another person. It was accepted that the Article 8 ECHR claim was based upon the appellant's private life. It was noted by Mr Ul-Haq in reply to Mr Lawson that the witness has not been called but could have been cross-examined if needed and the witness's evidence was not challenged.
17. During the course of his submissions Mr Ul-Haq was reminded about the specific terms of the grant of permission to appeal, which he accepted as being limited, which is an important aspect of this appeal.
18. The Judge who granted permission noted that the grounds of appeal, which were not drafted by Mr Ul-Haq, contained three Ground 4. The reference to ground 4 (ii) on which permission was granted is a reference to the middle of those pleaded grounds, and is in the following terms:

    Ground 4: nationality and negative approach to evidence

    20. It is submitted the finding on the appellant's nationality has been made in error. The judge has failed to consider the appellant's witness statement. At paras 5 to 11 the appellant sets out the questions he was asked during his substantive application on

Eritrea. It can be seen the appellant answered most of these questions correctly. Para 6 of the statement refers to the schools in Asaab. Evidence was provided of those schools to show those schools do exist. Para 7 is another example of the appellant having knowledge of Eritrea. This contradicts the judge's findings at para 15. It cannot be said, in light of the appellant's witness statement, that the appellant does not have knowledge of Eritrea. Taken together with the history provided by the country expert this finding of the judge is irrational and is a material error of law. The judge relies too heavily on the findings of the previous judge's determination and did not consider the evidence that was before him in this appeal. Paras 5 and 11 were not contested and the evidence was accepted by the respondent. This means the answers the appellant gave were correct.

21. Another example of this negative approach to the appeal was the Judge is reference in para 16. The judge states "the principal document that the appellant relies on is the birth certificate…" This is incorrect, it was the expert report. However, the judge chose to focus on the birth certificate as it seemed an easier target. Had the judge considered the witness statement of the appellant and the context of the situation in Ethiopia and Eritrea when the appellant was there, then it is reasonable to believe a different finding could have been reached.

19. The points pleaded in relation to nationality do touch on the Judges approach to the evidence and the weight given to that evidence without making specific reference to the issue of language. Ground 1 challenges the Judge's fact-finding, asserting the Judge had made a material error of law including misdirecting himself on the appellant's evidence on how he secured the birth certificate, which had led to an incorrect finding of fact, but permission to appeal to the Upper Tribunal was refused on this ground. There is no error in the manner in which the Judge assessed the evidence sufficient to amount to material error of law.
20. Ground 2 challenged the Judge's findings in relation to the birth certificate but permission was refused on that ground too.
21. Grounds 3 challenges the Judge's findings of fact and alleges a contradiction, claiming the First-tier Tribunal is an investigatory body where a judge has the opportunity to make findings of fact and ask questions, and the fact the Judge failed to do so in the appeal made his own findings unsound/unsafe given alleged contradictions raised in Grounds 1 and 2. Permission to appeal was refused on this ground, quite properly. Immigration Tribunal's are not investigatory tribunals. The procedure before them is adversarial and not inquisitorial. The Judge was entitled to assume that, in accordance with the directions, the parties had provided all the evidence on which they wished to rely. It is not for a Judge to prove an individual's case. The Judge assessed the evidence that has been provided and gave that evidence the weight that he thought was appropriate in all the circumstances.
22. Perhaps more relevant to the submissions made by Mr Ul-Haq is what I shall refer to as Ground 4 (i) which is headed "Ground 4: Dr Allo Country Expert Evidence". This ground asserts the Judge had taken what the expert had said at its lowest in relation to the birth certificate which allowed the Judge to 'unfairly justify his decision despite no negative findings being made by the expert'. The ground asserts, again, that the Judge's findings relating to the appellant's birth certificate amount of material error of law. Permission to appeal was refused on this ground as it was accepted that the Judge had considered the evidence. Permission to appeal was refused on this ground by Judge Keith on the basis the Judge did not arguably err at [22] in bearing in mind the expert's observation, in circumstances where the Judge had other concerns about the certificate's provenance. That analysis was open to the Judge and the grounds discloses no arguable error. Permission to appeal was therefore not granted in relation to the Judge's treatment of Dr Allo's report which will include the comments in relation to language.

23. The assertion the Judge erred in law at [16] in stating the principal document relied upon by the appellant was the birth certificate appearing at page 358 of the bundle, as if the Judge had somehow ignored other aspects of the evidence, is without merit. The Judge correctly referred to the previous determination of Judge Astle in accordance with the Devaseelan principles. There was no birth certificate before Judge Astle which was before the Judge in this appeal, and was therefore the principal document relied upon by the appellant to justify the Judge departing from the earlier findings. The Judge does not say the birth certificate is the only document as the grounds of challenge suggest or imply. The birth certificate was one document which was taken into account together with the other evidence made available to the Judge. It is clear the Judge took note of the appellant's own evidence as at [17] is specific reference to the evidence given in relation to how the birth certificate was obtained.
24. I do not find it made out the Judge did not consider the evidence from all sources with the required degree of anxious scrutiny. The Judge clearly did. It is not made out the Judge did not consider the evidence holistically before arriving at the conclusion set out in the determination that the appellant had not established any basis for departing from the earlier findings that the appellant was not Eritrean and was more likely to be Ethiopian.
25. In particular I do not find that there is any artificial separation in the manner in which the Judge considered the evidence. Just because an individual does not like the outcome does not mean that the Judge erred in the manner in which the evidence was assessed and factored into the overall finding. That includes the evidence relating to language. The Judge finds at [23] that Dr Allo expressed a view that the appellant's claim to be Eritrea is plausible although noted the expert should have been addressing the consistency of the account with the background evidence and that the assessment of the evidence was a matter for the Judge in any event. At [24] the Judge specifically refers to Dr Allo addressing the appellant's language abilities, clearly showing that the Judge was aware of and took this evidence into account. The appellant is, in effect, arguing that Dr Allo's opinions together with his witness statement should have been determinative of this issue. That does not establish material legal error in the conclusion of the Judge who, having factored that material into the assessment together with all other material, found there was no basis for departing from the earlier decision of Judge Astle. That has not been shown to be a finding outside the range of those reasonably available to the Judge on the evidence. Knowledge of the presence of schools or geographical features, a lot of which can be discovered on the Internet, does not of itself establish that a person is from that place.
26. Ground 5 headed "paragraph 276 ADE(1)(iv) insurmountable obstacles" asserts the Judge erred at [28] in not setting out the relevant provisions relating to this paragraph and "neither the Appellant's circumstances particulars informing a just decision".
27. There is no obligation upon the Judge to set out within the determination the relevant provision of this rule. It is settled law that judges in specialist tribunals are deemed to know and apply the law unless there is something in a decision that clearly indicates that they have misunderstood the law or failed to apply it correctly. Neither criterion is made out in this appeal.
28. The assertion the Judge should have set out the appellant circumstances is an argument that has no merit. The specific finding at [28] is that the appellant had not shown there would be very significant obstacles to his reintegration as required by paragraph 276 ADE. A reading of the evidence shows that is a finding that was clearly within the range of those available to the judge on the evidence. As noted above, these proceedings are adversarial. If the appellant was claiming that such circumstances existed the burden was upon him to

establish that fact. The appellant failed to do so on the evidence leading to the Judge's findings.

29. In relation to Article 8 ECHR, Ground 6 asserts the Judge has not set out the relevant legal provisions, law and test in relation to the application of Article 8 private life and the application of proportionality, and argues the reasons stated by the Judge for dismissing the appeal are arguably flawed and misconstrued.

30. At [28] the Judge finds the evidence did not show that compelling circumstances existed that would justify a grant of leave outside the Immigration Rules. Again, there is no obligation upon the Judge to set out the terms of Article 8 or the law, including case law, which exists in relation to the assessment of the claim on this basis. The Judge's finding is clearly understood by a reader, namely that the facts did not warrant a grant of leave on the basis of the appellant's private life. A reading of the evidence shows this is not an irrational conclusion. The appellant's presence in the United Kingdom has always been precarious and if one applies the provisions of section 117 of the Nationality, Immigration and Asylum Act 2002 to the weight to be given to a private life formed when that person's status is precarious or unlawful, there is little to support for the appellant's claim he should be entitled to remain in the United Kingdom on this basis. Whilst the Judge could have set out Razgar and the relevant section and included fuller paragraphs to give a reader, such as the author of the grounds, a clearer understanding, the overall conclusion that the decision is proportionate has not been shown to be one outside the range of findings reasonably open to the Judge on the evidence.

Notice of Decision

31. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 May 2022