Case No: UI-2023-003924

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER First-tier Tribunal No: PA/52875/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

29th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Robel KIBROM
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Patel of Counsel, instructed by JD Spicer Zeb
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 24 November 2023

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Sarwar signed on 10 April 2023 dismissing an appeal against a decision dated 12 July 2022 refusing a protection claim.

2. On appeal before the First-tier Tribunal the Appellant relied on protection grounds only; no case was pursued under Article 8 of the ECHR (see Decision at paragraph 14).

3. It was agreed between the parties that the only live issue was whether or not the Appellant was a national of Eritrea: it was common ground that if

he were then he would be at risk of persecution and therefore entitled to protection. (See paragraphs 15 and 16.)

4. The First-tier Tribunal Judge determined that he was "*not satisfied that the Appellant had met the evidential burden*" (paragraph 23). The appeal was dismissed accordingly.

5. The Appellant now appeals to the Upper Tribunal further to permission to appeal granted by First-tier Tribunal Judge Buchanan on 13 September 2023.

Analysis

6. The Appellant's claimed narrative was that he had left Eritrea with his mother at the age of 1 after his father was taken for military service. He returned in 2000 (at the age of 6) when deported with his mother and lived in Camp Sudan. 3 years later – i.e. at or about the age of 9 – he left with his mother for Sudan where they live with Ethiopian friends of his mother. (E.g. see the summary of claim at paragraph 20 of the First-tier Tribunal's Decision.)

7. The Appellant claims that his mother disappeared in 2010. The Appellant remained with the Ethiopian family, helping out in a coffee shop they owned.

8. The Appellant says that he then left Sudan in 2015, making his way to Europe via Libya. In Europe he travelled through Italy, Germany, and Belgium before coming to the UK. In Germany, in 2015, he claimed asylum, but his claim was refused. He was in Germany for 5 years, leaving in 2020 because his asylum claim had been refused. He arrived in the UK on 12 March 2020 and claimed asylum on the same day.

9. A screening interview was conducted on 12 March 2020, and the substantive asylum interview was held using a remote video connection on 24 May 2022.

10. In the premises, it may be seen that, on his case, the only period spent in Eritrea when the Appellant would have been cognisant of his circumstances and surroundings was the period of approximately 3 years from the age of 6 spent living in a camp. Thereafter, prior to coming to the UK, it is his case that he was mainly in the company of Ethiopians rather than Eritreans.

11. In such circumstances it is difficult to see what value there might be in submitting him to a knowledge-based test in respect of Eritrea. Nonetheless, that was an exercise embarked upon by the Respondent,

together with a consideration of the Appellant's language skills in Tigrinyan and Amharic.

12. The Respondent's rejection of the Appellant's claimed nationality, as set out in the 'reasons for refusal' letter ('RFRL') dated 12 July 2022, was, amongst other things, based on:

(i) Answers at interview to questions seeking to establish nationality and identity that were "*inaccurate or incorrect when compared to background information about Eritrea*" (RFRL, paragraph 16). One such inaccuracy is identified at paragraph 17. The Appellant's apparent lack of any meaningful recollection of the time spent in Campo Sudan is emphasised at paragraphs 26-28. The Appellant's apparent lack of knowledge of details surrounding military service in Eritrea – notwithstanding that this was expressed to be one of the basis of his asylum claim – was highlighted at paragraphs 37-39.

(ii) The Appellant's screening interview and asylum interview were conducted in Amharic ("*the official language of Ethiopia*"). It was asserted that the Appellant did not speak the recognised language of Eritrea notwithstanding his claim to be of Tigrinyan ethnicity, born to a Tigrinyan mother (paragraph 19). Although the Respondent accepted that in principle if the Appellant and his mother were living in Ethiopia and had an Amharic speaking maid at home, that they would have learnt some Amharic, it was not accepted that the Appellant's mother would have mainly communicated with the Appellant in Amharic rather than Tigrinyan (paragraphs 19 and 20). It was considered that an attempt to have the Appellant speak in Tigrinyan during the interview demonstrated very little knowledge of the language (paragraph 22).

(iii) The Appellant's apparent unfamiliarity with Independence Day celebrations, and the Respondent's inability to comprehend why the Appellant's mother might vote for independence and yet live in Ethiopia (paragraphs 23-25). (I pause to note it is unclear by what yardstick the Respondent was judging this aspect of the Appellant's mother's behaviour.)

13. The Appellant's Skeleton Argument before the First-tier Tribunal breaks down the Respondent's reasons into 19 sub-paragraphs (Skeleton at paragraph 10). Several points are subsequently advanced in respect of the Respondent's analysis (paragraph 14).

14. I am persuaded that there is substance in the Grounds of challenge before me to the effect that the First-tier Tribunal did not adequately identify the issues between the parties, and in consequence did not properly address and determine the issues in the appeal.

15. The First-tier Tribunal Judge summarised the RFRL at paragraph 21 of the Decision in 5 subparagraphs (a)-(e). Sub-paragraph (c) refers to the invocation of section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004; subparagraphs (d) and (e) simply state that it was the Respondent's case that the Appellant had not established a family or private life in the UK under the Rules and there were no exceptional circumstances such that Article 8 would be breached. As such it is only subparagraphs (a) and (b) that attempt to summarise the Respondent's evaluation of the facts. Those subparagraphs are in the following terms:

> "*(a) The Secretary of State does not accept that the Appellant is an Eritrean national. She has based this information on what she maintains are inconsistencies in the Appellant's asylum claim.*
>
> *(b) There were discrepancies in the account the Appellant had provided to the Home Office and the Respondent maintains these discrepancies affect the Appellant's credibility.*"

16. It seems to me that that summary is reductive to the point of being incomplete, and incomplete to the point of being inaccurate. It omits reference to what is perhaps the main core of the Respondent's reasoning - a lack of knowledge of the country of claimed nationality, and a lack of language skills in the principal language of the claimed country of nationality.

17. The Judge goes on seemingly to make due allowance for "*minor discrepancies which may be attributed to his age and the passing of time*" (without specifying of which minor discrepancies he was "*mindful*"), but does not thereafter specifically identify any other inconsistency or discrepancy in the narrative account that was to be held against the Appellant.

18. The only specific discrepancy that the Judge appears to identify is in respect of the evidence as to when the Appellant had met the witness that he called in support of his appeal. This is in itself the subject of challenge on the basis that the Judge arguably failed to distinguish between originally meeting in Africa, subsequent more recent contact over the Internet, and meeting in person in the UK. (Such a challenge informed, in part, the grant of permission to appeal – see grant of PTA at paragraphs 5 and 7.)

19. Even if the Judge was not in error in respect of his finding that the witness did not corroborate the Appellant's account, that in itself was not sufficient reason to reject the account. Accordingly, in so far as the account fell to be rejected by reference to inconsistency and discrepancy, the Judge fails to identify any specific inconsistency and or discrepancy relied upon.

20. Moreover, there is no particularised attempt to address the issue in respect of the Appellant's knowledge of Eritrea, or the issue in respect of his language skills.

21. In all the circumstances I conclude that the decision of the First-tier Tribunal is inadequate in that it is inadequately reasoned. It does not engage with core issues in the appeal and thereby does not offer either findings, or reasons for any findings, on such issues.

22. The challenge to the decision of the First-tier Tribunal succeeds accordingly.

23. It was common ground between the parties, and I agree, that in the event of an error of law as identified the appropriate forum in which to remake the decision in the appeal would be the First-tier Tribunal. This is because in substance there has been no proper trial of the facts and issues.

24. For completeness, I note that although a precautionary anonymity direction was made in the listing instructions before the Upper Tribunal, I do not repeat such a direction here. I note that the issue of anonymity was considered by the First-tier Tribunal (see Decision at paragraph 1), and no order made at that stage. There has been no objection by either party to such a ruling. For much the same reasons I see no reason to make an anonymity order now.

Notice of Decision

25. The decision of the First-tier Tribunal contained a material error of law and is set aside.

26. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Sarwar.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

21 February 2024