Upper Tribunal
(Immigration and Asylum Chamber)

MW (Nationality; Art 4 QD; duty to substantiate) Eritrea [2016] UKUT 00453 (IAC)

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 3 May 2016	.....

Before

UPPER TRIBUNAL JUDGE STOREY
UPPER TRIBUNAL JUDGE GRUBB

Between

MW
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Manley, Counsel
For the Respondent: Mr I Richards, Home Office Presenting Officer

1. Article 4(1) of the Qualification Directive does not impose a shared duty of cooperation on the Member State to substantiate an applicant's nationality.

2. Article 4(2) refers to documentation (including documentation regarding nationality(ies)) "at the applicant's disposal" - which must include documentation which is not in the applicant's present possession but is within his or her power to obtain.

3. The terms of Article 4(3) are consistent with the position that an applicant who denies he is a national of a country where he could obtain protection can be expected to take reasonable steps to establish that he is not such a national.

DECISION AND REASONS

1. The appellant, who claims to be a national of Eritrea, has permission to challenge the decision of First-tier Tribunal (FtT) (Judge Kimnell) dated 30 July 2015 dismissing his appeal against the decision made by the respondent on 12 May 2014 to remove her from the UK following the refusal of her application for asylum. A previous decision by FtT Judge M R Oliver was set aside by Deputy Upper Tribunal Judge Lewis in December 2014 for lack of reasons.

2. The grounds which persuaded UTJ Bruce to grant permission to appeal were threefold.

3. First, the judge was said to have erred in rejecting the appellant's claim to have been arrested and detained by the Eritrean authorities in November 2010 and to have fled Eritrea in consequence. The error was identified as being a failure to attach weight to the judge's positive finding that the appellant was a Pentecostal Christian. It was pointed out that the claimed arrest and detention in November 2010 took place when the authorities found the appellant in her home praying with other Pentecostal worshippers. It was stated that the judge proffered no effective reason for rejecting the claimed arrest and detention. It was submitted that each of the three reasons given at [46] and [47] for rejecting the appellant's account (the implausibility of her escape account; her not having an identity card in her possession; and her inconsistency as regards who was arrested) was said by the judge himself in the same paragraphs not to count against her: the judge it was said noted that the first two points had not been put to her at the hearing; and regarded the alleged inconsistency as having a satisfactory explanation. Accordingly, the only reason in effect for rejecting the core of the appellant's claim was because of the judge's (and respondent's) assessment as regards her nationality. It was submitted that it was an error of law to deduce an adverse credibility finding solely from a determination of nationality.

4. Before proceeding further, it is convenient to set out in full what the judge said at [46] – [47]:-

> "46. The appellant's information about her uncle engineering her escape from detention in Eritrea is extremely vague. She does not explain how it was arranged or why it would be that her close relative would have such influence with the authorities that, firstly, he would know who to approach in order to arrange a bribe, how he would identify an officer who was susceptible, how the whole process was managed and, if a bribe was paid, how much it was. Quite why she was not in a possession of her identity card at the time of her arrest, given that the

> card and she were both at her uncle's home, is unclear, but no questions were asked about that therefore I draw no conclusions from it. The appellant's journey to the United Kingdom requires some explanation because she spent three years en route and when she did leave Sudan to travel to the United Kingdom she was leaving a country in which she had no well-founded fear of persecution. I conclude that the appellant has been unforthcoming because she has not been candid with the UK authorities and has failed to discharge the duty on her mentioned in the UNHCR Handbook to provide the respondent with full and complete information.
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> 47. I did not find the appellant's answer to question 108 of her interview to be particularly significant. Ms Ellis sought to argue that the appellant had given contradictory evidence about who was arrested because the words 'and my father' appear in the answer. I agree that the most likely interpretation is that the appellant was saying in answer to question 108 that her father was arrested with others, but the reply is ambiguous and it is possible that she was simply saying that the people arrested worshipped with her father. Therefore I do not hold that reply against her either."

5. We do not find this first ground made out. For one thing the grounds are inaccurate in portraying the judge as stating that none of the stated reasons are to count against her. The only point which the judge states he "will draw no conclusion" from concerned the matter of why she was not in possession of an identity card at the time of her arrest. The judge says he will draw no conclusions because she was not asked questions about this. The judge says nothing in [46] to suggest that the two reasons he relies on are not being counted against her. These reasons were that the escape account was "extremely vague" and that she had not been candid in the account she gave of the journey to the UK via Sudan. For the judge, this meant she had failed to discharge the duty on her to provide the respondent with full and complete information. These reasons were considered by the judge to be reinforced by serious difficulties as regards her claim to be a returnee from Eritrea and to have adequate knowledge about the country. Considered cumulatively, we are quite satisfied that these reasons were ones that were both open to the judge and sufficient to justify his specific conclusions. The judge did not simply rely on the difficulties as regards her claim to be a national of Eritrea.

6. The second ground, which forms the central part of the appellant's submission, attacks the judge's conclusion that the appellant is a national of Ethiopia and not as claimed of Eritrea. This conclusion was said to be flawed for essentially two reasons. It is convenient to summarise and then give our assessment of each of these reasons in turn.

7. The first reason focuses on the judge's assessment in [60] that the appellant had not taken all reasonable steps to obtain evidence from the Ethiopian Embassy in Croydon that she is not Ethiopian. This was said to be wrong because in fact the responsibility to take all reasonable steps was a <u>shared</u> one. Specific objection was taken to the judge's statement in [59] that "[t]here is nothing the respondent could have done to assist the appellant to make her case that she is Eritrean". It was argued that

there clearly was something the respondent could have done, as it is routine for her to engage with the Ethiopian Embassy to establish nationality at the stage when she is enforcing removal against someone considered to be a national of that country. On the authority of MM v Minister for Justice, Equality and Law Reform, Ireland, and another (Case C-277/11); [2013] 1 WLR 1259) there is a shared responsibility between the appellant and the respondent at the initial fact-finding pre-decision stage of the proceeding with respect to ascertaining the facts to establish an asylum claim[1]. Yet in the appellant's case the respondent had manifestly not made any inquiries relating to the appellant's nationality with the Ethiopian Embassy in London. Since the appellant had stated that she did not fear persecution in Ethiopia (only in Eritrea), there was no risk that inquiries would put her in jeopardy. Such inquiries of the Ethiopian Embassy could lawfully and reasonably have been made.

The duty to substantiate nationality

8. We reject this contention. In our judgement it rests on a misconception regarding the shared duty of the respondent in the initial fact-finding stage as set out in Article 4 of the Qualification Directive as analysed by the CJEU in the MM case. Article 4(1) does specify that the assessment of the

[1] Paragraphs 63-69 of MM state:

"63 As is clear from its title, Article 4 of Directive 2004/83 relates to the 'assessment of facts and circumstances'.

64 In actual fact, that 'assessment' takes place in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are met.

65 Under Article 4(1) of Directive 2004/83, although it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.

66 This requirement that the Member State cooperate therefore means, in practical terms, that if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled. A Member State may also be better placed than an applicant to gain access to certain types of documents.

67 Moreover, the interpretation set out in the previous paragraph finds support in Article 8(2)(b) of Directive 2005/85, pursuant to which Member States are to ensure that precise and up-to-date information is obtained on the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited.

68 It is thus clear that Article 4(1) of Directive 2004/83 relates only to the first stage mentioned in paragraph 64 of this judgment, concerning the determination of the facts and circumstances *qua* evidence which may substantiate the asylum application.

69 By contrast, it is apparent that the argument put forward by Mr M. concerns the second stage, also mentioned at paragraph 64 above, which relates to the appraisal of the conclusions to be drawn from the evidence provided in support of the application, when it is determined whether that evidence does in fact meet the conditions required for the international protection requested to be granted."

relevant elements of the application for international protection must be undertaken by the Member State "[i]n cooperation with the applicant". But this shared duty must be interpreted in light of the prior requirement in Member States such as the UK to "consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection". Article 4(2) contains a list of what the elements referred to in paragraph 1 consist of. This list reads as follows:

> "the applicant's statements and all documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, **identity**, **nationality(ies)**, country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection"

(emphasis added in bold).

9. Notably the wording of Article 4(2) refers to documentation "at the applicant's disposal"; it does not refer to "in the applicant's possession". "At the applicant's disposal" must include documentation which is not in the applicant's present possession but which is within the power of the applicant to obtain.

Assessment pertaining to nationality/citizenship

10. Nor is it just that the Directive regards the duty of substantiation of nationality to rest on the applicant (by virtue of the Member State in question - the UK - considering it the applicant's duty to substantiate his application). When setting out the basis on which assessment of an application (what the MM judgment terms the second stage of assessing (or evaluating) the application) Article 4(3) specifically identifies the steps that have to be taken in the context of assessing nationality/citizenship as being for the applicant:

> "3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
>
> (e) whether the **applicant** could reasonably be **expected to avail himself** of the protection of another country where he could assert citizenship."

(emphasis added in bold)

In our judgement, the terms of Article 4(3) are consistent with the position that an applicant who denies he is a national of a country where he could obtain protection can be expected to take reasonable steps to establish that he is not such a national.

11. Given that the appellant can derive no support from the Directive (or the corresponding provision of the Immigration Rules set out in paragraph 339I), there is no reason to consider departure from Court of Appeal authority on this point and in MA (Ethiopia) [2009] EWCA Civ 289 their

Lordships clearly did not view the duty resting on the applicant to take reasonable steps as being in any way shared. Elias LJ stated at [50-[54] as follows:

> "50. In my judgment, where the essential issue before the AIT is whether someone will or will not be returned, the Tribunal should in the normal case require the applicant to act *bona fide* and take all reasonably practicable steps to seek to obtain the requisite documents to enable her to return. There may be cases where it would be unreasonable to require this, such as if disclosure of identity might put the applicant at risk, or perhaps third parties, such as relatives of the applicant who may be at risk in the home state if it is known that the applicant has claimed asylum. That is not this case, however. There is no reason why the appellant should not herself visit the embassy to seek to obtain the relevant papers. Indeed, as I have said, she did so but wrongly told the staff there that she was Eritrean.
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> 51. I am satisfied that there is no injustice to the appellant in this approach: it does not put her at risk. The real risk test is adopted in asylum cases because of the difficulty of predicting what will happen in the future in another country, and because the consequences of reaching the wrong decision will often be so serious for the applicant. That is not the case here. As Ms Giovannetti pointed out, there is no risk of ill treatment if an application to the embassy is made from the United Kingdom, even if it is refused.
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> 52. Furthermore, this approach to the issue of return is entirely consistent with the well-established principle that, before an applicant for asylum can claim the protection of a surrogate state, he or she must first take all steps to secure protection from the home state. That was the approach adopted in *Bradshaw*, to which I have made reference. It can be seen as an aspect of the duty placed on an applicant to co-operate in the asylum process. Paragraph 205 of the UNHCR handbook expressly states that an applicant for asylum must, if necessary, make an effort to procure additional evidence to assist the decision maker. *Bradshaw* is an example of such a case. The issue was whether the applicant was stateless. Lord MacLean held that before a person could be regarded as stateless, she should make an application for citizenship of the countries with which she was most closely connected.
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> 53. Any other approach leads, in my view, to absurd results. To vary an example given by my Lord, Lord Justice Stanley Burnton in argument: the expert evidence might show that three out of ten in the appellant's position were not allowed to return. If that evidence were accepted it would plainly be enough to constitute a real risk that the appellant would not be successful in seeking authorisation to return. But it would be strange if by the appellant's wilful inaction she could prevent the Tribunal from having the best evidence there is of the state's attitude to her return. She could refuse to put to the test whether she might be one of the seven who would be successful. It would in my view be little short of absurd if she could succeed in her claim by requiring the court to speculate on a question which she was in a position actually to have resolved.

> 54. It is clear that the Tribunal did not approach matters in this way. In the absence of evidence as to how she would have been treated had she made a proper application, they sought to resolve the issue by considering whether someone in her position was likely to be allowed to be returned or not. In adopting this approach they were apparently approaching the matter in line with the submissions of the parties. Nevertheless, for the reasons I have given, in my judgment this means that they erred in law. They ought not to have engaged on this inquiry without first establishing that the appellant had taken all reasonably practicable steps to obtain authorisation to return."

12. The judge may have stated matters too absolutely in [59], when he said "[t]here is nothing the respondent could have done to assist the appellant make her case that she is Eritrean". It was possible the respondent could have discussed with the appellant whether she was content for the respondent to make inquiries of the Ethiopian embassy. It was possible, if satisfied there would be no risk to the appellant, that the respondent could have made inquiries of the Ethiopian embassy herself. But there was no duty on her to do this.

The issue of whether the appellant took reasonable steps

13. The second basis identified in the grounds for attacking the judge's approach to assessment of nationality avers that the judge was simply wrong to conclude that the appellant had not taken all reasonable steps with respect to establishing that she was not Ethiopian. It was submitted in this regard that the judge was wrong to conclude that the appellant had not acted in accordance with the principles set out in MA (Ethiopia), in that:

    (i) her solicitors had written to the Ethiopian Embassy on 30 May 2014 to which there had been no reply; and

    (ii) she had attended the Ethiopian Embassy to make a personal application taking with her a 13 June 2014 letter from the solicitors.

    To find that there was something more that the applicant could have done was to assume a "universal finding that no appellant can act reasonably in such circumstances as they are all dishonest".

14. We are unable to agree with this submission. What the judge said at [60] is this:

> "60. I do not accept that the appellant has taken all reasonable steps to engage with the Ethiopian Embassy in London. She has given only partial information which has been insufficient for the Ethiopian authorities to acknowledge her nationality. I found the appellant evasive and untruthful in relation to her ability to establish contact with relatives abroad. I find that she has done that in order to hide the truth about her nationality and her journey to the United Kingdom."

15. The letters from the appellant's solicitors to the Ethiopian Embassy dated 30 May and 13 June 2014 did state that they were acting for the appellant

who was seeking to establish her nationality and they did give the home, place of birth and date of birth of her and her parents etc., but they were stated in the context of what was only an inquiry as to how she should go about making an application for a travel document or passport. It is said the first letter did not receive a reply, but in any event the appellant did then attend the embassy with a copy of the June letter and completed an application form for a passport giving much the same particulars. Her completed application form contains a handwritten refusal decision from the consul stating:

> "[T]he applicant has not attached supportive documents with her application for an Ethiopian passport. Therefore there is no valid reason for the Embassy to issue her an Ethiopian passport.
>
> Taking into consideration the information letter and further to the questions asked to the applicant in relation to her family background we have come to the conclusion that the applicant has not provided sufficient documents to substantiate her reliability…"

This handwritten decision conveys several things: that the embassy took into account the appellant's details given in the solicitor's letter ("information letter"); that they interviewed the applicant in relation to her application with particular reference to her family background; and that they were not satisfied she had provided sufficient documentation. As a statement of reasons for refusing an application for nationality it seems to us to be unexceptionable. It is a recognised principle of international law that every State determines who its nationals are under its own law[2]: see Art. 1 of the Convention on Certain Questions Relating to the Conflict of Nationality Law, 179 LNTS 89, 13 April 1930 (entry into force: 1 July 1937); see also Permanent Court of International Justice, advisory opinion of 7 February 1923, Nationality Decrees in Tunis and Morocco, PCIJ Series B, No 4; KK & ors (Nationality; North Korea) Korea CG [2011] UKUT 92 (IAC). Documentary evidence to support an application for nationality is a common feature of countries' nationality determination procedures. We know from the solicitor's letter and the appellant's statements that she claimed to have no documents to support her application, but there is nothing to suggest that she made any effort to obtain them, e.g. by seeking to contact family members for copies of their identity documents. Nor is there anything to suggest that her solicitors sought to establish from the Ethiopian embassy in advance of her embassy appointment what documents they would expect her to produce or, if certain documents were unavailable, what evidence they would accept in lieu. We would observe that if after her interview the appellant or her solicitors were of the view that the embassy had been unreasonable or unfair in basing their rejection on her having failed to produce relevant documents, they could have written to say so. There is nothing to suggest that they attempted to do that.

16. The appellant may not have been, as was the appellant in MA (Ethiopia) someone who clearly "misled" the embassy, but she was someone who

[2] As to the meaning of law in this type of context, see Pham v Secretary of State for the Home Department [2015] UKSC 19 at [34].

had not taken all reasonable steps because the evidence was that her efforts to establish Ethiopian nationality (even on the assumption that she gave true particulars) were half-hearted. This is what the judge found and it was entirely reasonable of him to do so.

17. We would also observe that the judge did not simply consider the appellant's attempts to establish her lack of Ethiopian nationality by reference to her contacts with the Ethiopian embassy. As is clear from [60], he found her evidence to him as regards her inability to contact relatives abroad “evasive and untruthful”.

18. Given that we find no error in the judge’s assessment that the appellant had failed to take reasonable steps to establish that she was not Ethiopian, we see no merit whatsoever in the additional contention of the appellant in the renewed grounds that the judge’s approach assumed the appellant’s dishonesty. There were at least two possible views the judge could have taken about the appellant’s approaches and exchanges with the Ethiopian embassy: that she was seeking to help by giving them full and true particulars; or that she was not. Having considered the evidence as a whole, the judge decided it was the latter. There were no artificial assumptions either of honesty or dishonesty involved.

The Sprakab report

19. We turn then to the third and final ground advanced by the appellant which assails the judge’s reliance on the Sprakab report. This ground alleges that the judge should have found that the report on the appellant displayed procedural bias because at no stage did it test her understanding of Tigrinya, notwithstanding that she was recorded as having stated that she understood Tigrinya. The judge should not have accepted the respondent’s assertion that due to her claimed parentage she should have used speech displaying some features of Tigrinya, as the appellant had given a plausible account of why her speech did not display such features – principally that she was a migrant child who had been brought up by an Ethiopian nanny. Further, whilst analyst one, Catharina Karlhager, records expertise in analysing Amharic and Tigrinya, the second linguist, Petter Lovgren, records no evidence in his CV that he has expertise in either of these languages. The finding of the judge at [56] that both the experts are well qualified was therefore irrational. Finally, the judge should have taken account of the fact that the “Knowledge” section of this report accepts that the appellant had knowledge of Assab (her claimed birth place) and of Eritrea. The only point taken against her in this section of the report is limited to one, concerning her knowledge about the two ports, in Assab.

20. We are not persuaded that this ground discloses a material error of law either. The judge’s assessment of the appellant’s identity and nationality was based on the evidence as a whole, so that, in relation to the appellant’s claimed knowledge of Eritrea, the Sprakab report section on “Knowledge” was only part of the overall picture. In her asylum interview the appellant had failed to show adequate knowledge of Eritrea in several

respects. The respondent's refusal decision noted that she had failed to give correct answers to questions about Eritrea regarding opening hours of shops, school uniforms, traditional sports, winter months in Assab, the name of the ancient city near Assab, the ancient islands in the Bay of Assab, the second port in Eritrea, the name of the section of Assab by the shoreline and the part of the section of Assab in the centre. We are also satisfied that in assessing the significance of these shortcomings the judge took proper account of her claimed reasons for them (including her claim to have only lived in Eritrea for three short periods). We conclude that the judge's findings as regards knowledge were entirely open to him on the evidence.

21. As regards the appellant's linguistic characteristics, it was equally the case that the judge had regard not just to the Sprakab report but to the asylum interview (which included some questions asked in Tigrinya) and the appellant's own evidence at the hearing: see especially [17] – [19], and submissions made about the Sprakab report [39].

22. We would accept nevertheless that the judge did rely significantly on the Sprakab report, and that if such reliance was misplaced that would give rise to a material error of law: however we do not find such reliance was misplaced.

23. What the judge concluded about the report is set out at [55] – [57] as follows:-

> "55. I do not accept that the report shows evidence of procedural bias. It is apparent from the introductory passage to the report at C1 that the analysts were asked to examine the applicant's language by analysis. It does not indicate that the analysts were asked to establish that the appellant is from Ethiopia. Secondly, it is acknowledged that the report was prepared on instructions from the Home Office but Sprakab, its linguists and analysts are aware that the material might be considered on appeal and that it is the duty of the analyst to help the Tribunal on matters within Sprakab's expertise. The duty, it is said, is 'paramount and overrides any obligation to the Home Office. We have complied with our duty to the Tribunal…'
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> 56. I note what was said by the Supreme Court about the decision of the Upper Tribunal in the case of MN (Somalia) v Home Secretary [2014] 1 WLR 2064, i.e., that where a Sprakab Report expresses an opinion in terms of certainty or near certainty then little more is required to support a conclusion, underplayed the importance in any case of the Tribunal itself examining such a report critically. But the specific criticisms made by Mr Chelvan in this case of this report seem to me to be unfounded. The two analysts who reached their conclusion are well qualified and I give due deference to their opinion, whilst at the same time placing the report in context with the other evidence. I would not agree with Deputy Judge of the Upper Tribunal I A Lewis who said when remitting this case for a further hearing that the report is 'near determinative' but it does deserve significant weight.
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> 57. The appellant has given evidence that the reason why she is not fluent in Tigrinya is because she was raised in an Amharic speaking

> environment. Her father was away working a lot and her mother died when she was only 2 years of age. On the other hand the appellant was, on her evidence, residing in Ethiopia only until the age of 8. She was residing in Sudan with her father for eight years until 2009 and has also spent time in Eritrea and married a man in Eritrea on 23rd May 2010. I do not find her evidence that he was living in Ethiopia only until the age of 8 at all likely, given the findings in the Sprakab Report."

24. We derive from the judge's reasoning as set out in these paragraphs the following. We begin with a point not raised by Mr Manley, but important nonetheless. The judge clearly took cognisance of what Lord Carnwath had said in MN (Somalia) [2014] UKSC 30 and made sure to establish whether the judge had committed the same error as the Upper Tribunal was held to have done in that case of underplaying the importance in every case of the Tribunal examining the report critically, and not just reading off its conclusions if expressed as a near certainty. We note also that, unlike the report considered in MN**,** the report in this case was by identified linguists.

25. We next observe that the judge gave specific attention to the appellant's contention that the report betrayed procedural bias. What the judge concluded in [55] was his response to the contention of the appellant's representative at that hearing, Mr Chelvan, which he recorded at [54] as being that "the respondent had set out to prove that the appellant is from Ethiopia rather than help her establish her true nationality". We consider the judge's reasons for rejecting this contention was a sound one, and that the judge was right to consider that the authors of the report sought to establish the appellant's linguistic characteristics with an open mind and did not see themselves as seeking to establish that the appellant is from Ethiopia. (We would recall that for reasons given earlier we reject the notion implicit in the above argument that the burden of substantiation is not on the applicant, but depends on help from the respondent.)

26. The third point we would make is that we see no material error in the judge stating at [56] that "[t]he two analysts who reached their conclusions are well qualified and I give due deference to their opinion". This assessment did not assert that both were well qualified in Tigrinya and Amharic and as a statement about their qualifications as set out in their CVs, it was not incorrect. It stood as a direct answer to the submission from Mr Chelvan, recorded at [39] that "the analysts were not suitably qualified to carry out the task" and at [54] that there was a "lack of any evidence of expertise in analysing either Amharic or Tigrinya in the second linguist's CV". Whilst the second analyst's CV did not demonstrate any knowledge of Tigrinya or Amharic, the report sets out a description of its methodology noting that "[l]anguage analysis cases regional and local linguistic features in phonology, prosody, morphology, syntax and lexica…" It states that "[i]f necessary, a second opinion is requested by one or more analysts" and adds:

> "Every language analysis report is reviewed by two or more linguists to ensure the quality and contents. The language analysis in this report has

been compiled by analysts in cooperation with Sprakab's linguists. A Sprakab linguist bears the ultimate responsibility for the quality and content of the language analysis."

27. It is also confirms in respect of the report on the appellant that the "Examination/analysis [was] carried out by expert analysis working under the supervising umbrella of expert linguists."

28. To our satisfaction the above makes clear: (i) that the expertise of language analysis goes beyond linguistic expertise in a particular language/languages (and includes, for example, knowledge of phonology, morphology, syntax, lexica); (ii) that whilst the analysts may include more than one linguist it is only necessary for there to be one linguist (and a "second opinion" can be requested by one or more analyst); (iii) it is the linguist who bears the ultimate responsibility for the quality and contents of the language analysis; and (iv) that in addition to the input of the analysts, Sprakab ensures that its analysts work under the supervising umbrella of expert linguists.

29. Seen in this context, the second linguist involved in the report on the appellant may not have possessed any knowledge of Tigrinya or Amharic, but he was a linguist whose qualification included basic, intermediate and specialised and advanced courses in linguistics and a basic and intermediate course in computational linguistics. Given that the report's methodology accorded ultimate responsibility to the first analyst, linguist Catharina Karlhager, who did have specific expertise in Amharic, Tigrinya and Oromo, we see nothing untoward about the involvement of one analyst who did not.

30. As regards the contents of the report, the assessment made was that it was very likely that the appellant's linguistic background was Ethiopian as she demonstrated that she had "mastered Amharic to the level of mother tongue speaker", that the variety of Amharic she spoke was one found in Ethiopia and that "[h]er speech did not display any feature of Tigrinya which can be expected among Eritreans". In reaching these conclusions the analysts were clearly aware that the appellant had stated, *inter alia*, that she had been born in Assab in Eritrea of Eritrean parents but lived in Addis Ababa in Ethiopia for seven years. They clearly reached their conclusions after a specific analysis of linguistic level, phonology, morphology and syntax and lexica (the last three with specific examples from her speech). It is also clear that the analysts reached the view they did notwithstanding that on the section on knowledge assessment the appellant was only noted to have lacked knowledge about Eritrea on one matter: "two ports (she mentioned Dahlak which is not a port but an island)". Given that their report was a linguistic analysis, it would have been odd if they had treated the mixed conclusions of the knowledge section as determinative in any event.

31. In short, we reject the appellant's contention that the Sprakab report was flawed and the concomitant contention that the judge fell into error by placing reliance on it.

32. For the above reasons we conclude:

33. The First-tier Tribunal Judge did not materially err in law.

34. His decision to dismiss the appellant's appeal must stand.

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

Dr H H Storey
Judge of the Upper Tribunal