Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11485/2012

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Sent**
On 15 May 2013	**On 03 June 2013**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

SEADA ASRAT TEBEKA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms T Hunt, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr J Harrison, Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The nationality of the appellant is in dispute. It is the Secretary of State's case that the appellant was born on 25 July 1985 and is a national of Ethiopia with the name Seada Asrat Tebeka. It is the appellant's case that her name is Kidist Tsegaye Gebregiorgis and that she is an Eritrean national born 4 October 1986.

2. Under the surname Tebeka, the appellant was issued with a visa by the British authorities in Beirut on 25 January 2012 in order to come to the United Kingdom as a domestic worker/visitor accompanying Sheikh Saud Sherbatly for a period of three months. She thereafter came to this country with her employer's family whom she left in June 2012. This was the second occasion the appellant has come to the United Kingdom with the family. She had been here before in June 2011.

3. According to the application form relating to the more recent application, the appellant was born on 25 July 1985 in Addis Ababa, Ethiopia and is a single female. In the application for her earlier visa, the appellant explained that she had lived at the address given in Ramlet El Bayda where she was employed by her sponsor on a full-time basis as a housemaid since 13 November 2007. The passport produced with both applications on which the appellant entered the United Kingdom is recorded to have been issued by the "Main Department of Immigration and Nationality" in Ethiopia on 10 April 2007.

4. After leaving her employer's household (which was recorded in the application made in January 2012 as Regent Park House, 105 Park Road Street, London) in June 2012, the appellant stayed with a person from Sudan whom she had met by chance on the street for four months. She cared for his wife during the delivery of her baby. The same person walked with the appellant to the Home Office in Croydon where she claimed asylum on 31 October 2012.

5. She explained when she applied that she was Eritrean with the name given above. She would try to get her family to send her documents and also indicated that her actual date of birth was 4 October 1986. She was Tigrinyan and of the Christian faith and had left Eritrea in June 2004 by car to Sudan which she then left in July 2006 to travel to Ethiopia where she obtained an Ethiopian passport and from there went to Beirut. She explained in her screening interview that she had a visa to go to Beirut in 2007 and in addition she referred also to the difficulties that she had had with her employers who made her suffer a lot.

6. A substantive asylum interview with the use of an Amharic interpreter took place on 16 November 2012 and in the course of some 154 questions the appellant was asked about her background, circumstances and history. In summary it is that she was born in Eritrea in Dekemhare in the south of the country. Two years later she moved with her family to Debrezeiti, Ethiopia where her father had employment. He owned a shop. Although her parents spoke Tigrinyan, Amharic was used in the household. The appellant has four brothers and one sister. Three of those brothers are still serving in national military service in Eritrea. The eldest is living in Asmara after completing his national service. His sister also lives there.

7. In 1998 the appellant's father, together with two brothers, returned to Eritrea. The appellant and her remaining family returned in 2000. Her father was initially put under arrest on his return as he had earlier refused work with the government of Eritrea. He was released after a two year sentence.

8. The appellant was 14 on her return. It is her case that she left Eritrea in June 2004. She was then 18 and had been sent national service call up papers on 15 June 2004 and she was required to report at the end of that month. She was taken to Sudan with the assistance of an agent where she remained until July 2006. She was in Ethiopia for three months with the assistance of an agent and it was there that she obtained the Ethiopian passport that permitted her to travel on for her employment in Lebanon.

9. The Secretary of State did not accept the appellant's claimed Eritrean identity and maintained that she would be returned to Ethiopia of which she is a national. This was because:

   (i) the appellant had been able to travel on the Ethiopian passport which had been accepted as genuine by the Entry Clearance Officer at the British Embassy in Beirut; and

   (ii) although claiming to be an Eritrean national she spoke only Amharic and Arabic.

10. First-tier Tribunal Judge Lever likewise did not believe the appellant and dismissed her appeal on asylum, humanitarian protection and human rights grounds.

11. In granting permission to appeal, First-tier Tribunal Judge Kamara observed:

> "In an otherwise well-reasoned determination the judge arguably erred in law in his findings as to the reliability of both the Eritrean documents submitted by the appellant and the Ethiopian passport used by her to travel to the United Kingdom. Furthermore, I find there is merit in the grounds relating to the judge's finding that it was not reasonably likely that the appellant would be able to speak Tigrinya. Finally, according to Counsel's note at the hearing, there appears to be some dispute as to the appellant's oral evidence in relation to her flight from her employer's home. This evidence relates to an issue regarding which the judge found a clear inconsistency."

12. In a letter dated 9 April 2013 the Secretary of State indicated that the appeal in the Upper Tribunal was opposed. It is argued that the judge had made a series of carefully-reasoned findings in support of his conclusion that the appellant had not given a credible account of her claim for asylum. The judge had given good reasons for finding the appellant's inability to speak Tigrinya given her background and furthermore had found that the Eritrean identity documents had not been subject to the same degree of scrutiny as the appellant's Ethiopian passport. The judge had also made clear findings concerning the unlikely events relied on by the appellant in enabling her to regain contact with her parents. On the facts before him the judge was entitled to conclude that the appellant's account was not genuine.

13. At the hearing before me on 15 May I heard lengthy submissions from the representatives confined to whether the First-tier Tribunal had made a material error of law. I reserved my determination.

Did the First-tier Tribunal Err in Law

14. The lengthy grounds of application take issue with a number of the credibility findings of the judge under three headings, being:

    (i) the identity documents;

    (ii) the issue of language;

    (iii) the appellant's account of how she fled her employers.

15. I heard submissions on each of these points in reverse order, beginning with the issue of the appellant fleeing the family for whom she was working in London.

16. The judge referred at [45] of his determination that at interview by the Secretary of State she had explained that her time with her Lebanese employers had been a harsh regime where she was essentially incarcerated within the buildings in which she lived almost constantly. On the first occasion she had travelled to the United Kingdom in 2011 she had described living with the family in a hotel. He considered that had she genuinely sought to leave their employment earlier it was difficult to see that she did not have the opportunity of doing so. He considered there was also inconsistency over the account given by the appellant of her escape, contrasting the answers given at interview and that in oral evidence before him. At interview she had said the other (maids) were asleep when she left. In oral evidence she had claimed that she had spoken to them about leaving but they did not wish to go. He considered that this inconsistency was unlikely to occur in a genuine account.

17. It was clear to him from the evidence and the log of a missing person that the appellant was living in Central London. 10 minutes after having left the house she met an unknown Sudanese man called Hassan. He had taken her to his house which was 50 minutes walk away and she was effectively incarcerated by him inside the house to care for his pregnant wife. The judge found it incredible that she had not found an opportunity to leave. She had claimed that they had walked for one hour from his house to the asylum centre in Croydon. The judge considered the account of that journey entirely impossible.

18. The challenge by Ms Hunt is on the basis that:

    (i) The judge failed to take into account the case in evidence that her employers would lock her into the property and when she did abscond it was her first opportunity;

    (ii) The clear inconsistency referred to by the judge (regarding the role of the other maids) was an inaccurate account of the evidence and did not concur with Counsel's note.

(iii) There was no basis for the conclusion regarding the distance between the appellant's employer's abode and Croydon as there was no evidence where the employer resided. The total of two hours' walk provided were rough estimates and would encompass a wide radius.

19. I find no merit in points (i) and (iii) above. The judge was entitled to observe that the appellant had previously stayed in what had been described as a hotel in the United Kingdom. Croydon is some twelve miles from Central London. As I have noted above, the appellant's employer's address was in Regent's Park.

20. I consider, however, there is some merit in (ii). At her asylum interview, after explaining how she had run away when her employers had forgotten the key was in the door, the appellant was asked "did the other girls leave?" She responded "they were asleep at that time".

21. According to the judge's note, under cross-examination:

> "Sleeping with two other house maids.
>
> All treated badly.
>
> Discussed it between us.
>
> They were Eritreans.
>
> Don't know if they were on false passports.
>
> Talked about getting away from employers.
>
> Q137 discovered key and got away.
>
> I did suggest to others to go with me.
>
> Q137 – said they were asleep.
>
> I asked them before they went to sleep.
>
> They (indecipherable) coming – said no."

22. It is clear that this aspect was not explored in any detail by the Secretary of State at the asylum interview. The different accounts do not reveal an inconsistency although it was arguably open to the judge to draw an adverse inference from the appellant not explaining how she had discussed matters with the other maids but they had decided not to leave with her in response to the question at 137. Even so I do not consider this to be an inconsistency and not sufficient to disbelieve an overall account.

23. It is necessary therefore to examine in the context of the other challenges made by Ms Hunt the other reasons given by the judge for rejecting the appellant's account. I turn to the next issue relating to language.

24. The judge observed that the appellant claimed to understand some Tigrinya although the assertion had never been tested, but she accepted she did not speak this language. He considered an expert report relied on

indicated that her use of Amharic was consistent with her being an Ethiopia but he also observed that this was not inconsistent with her being Eritrean given the large number of Eritreans who moved to or who were expelled from Ethiopia. He then went on to note:

> "What the expert does not comment upon, however, potentially because he did not know about the fact, is that on the appellant's own evidence both parents spoke Tigrinya and spoke Tigrinya to each other. Given that she had spent the vast majority of her life living with her parents it is not reasonably likely that she would be unable to speak Tigrinya herself in those circumstances. Further, according to the expert report, Tigrinya is the language used only in the highland Christian community in Eritrea. It is not claimed that the appellant's family is of that community. It is not something suggested by the experts. Further, the appellant speaks Arabic, a natural inference being she developed the use of that language whilst serving as a domestic worker in Sudan and thereafter with the Lebanese family. Her account of life with the Lebanese family and indeed in the Sudan does not suggest she had much opportunity to interact with others or be involved in lengthy discourse with Arabic speakers. Accordingly, either the account of her life as a domestic worker in Sudan and thereafter is a less than accurate one or she clearly has an ability to pick up language. If the latter, that factor again detracts from the concept that she would not speak Tigrinya if that was the language used by her parents over the many years that she had lived with them."

25. The challenge by Ms Hunt is:

    (i) The judge failed to take proper account of the evidence the appellant had only lived with both her parents between the ages of 14 and 18 and previously with her mother only.

    (ii) There was no specific basis or expert evidence to draw such a conclusion about how long it would take an appellant to speak a language that she had overheard her parents speaking over a limited number of years.

    (iii) The appellant's ability to speak Arabic as a domestic worker as opposed to her inability to speak Tigrinya was an inappropriate comparison to make.

    (iv) The expert report that was available in the case makes it clear the language skills of the appellant are consistent with her being Eritrean.

26. The point made at (i) is without merit and inaccurate. On the appellant's own account she lived with her father and mother in Ethiopia until her father left in 1998 and remained with her mother until she travelled with her to Eritrea, by which time her father had served her sentence and the family lived together until she was 18. The explanation given by the appellant at her asylum interview why she could not speak Tigrinyan was a weak one. She explained that her father used to leave the house very early in the morning and come back in the evening and her mother was ill. Her earlier answer was that her parents spoke Tigrinyan. It was reasonable for the judge to conclude that the appellant would speak this language herself.

27. As to point (iii), the judge was entitled to give some weight to the ability of the appellant to acquire Arabic working as a maid as indicative of her facility in other languages. As to (iv), the judge was in error in speculating the expert did not know on the appellant's own account that both her parents spoke Tigrinya to each other. Dr Poole's report indicates that he had read the reasons for refusal (letter) and witness statement dated 23 January 2013. It is unsatisfactory that he was not provided with a copy of the record of interview of the appellant. However, paragraph 7(b) of the refusal letter states:

> "You speak Amharic and Arabic. You do not speak Tigrinyan but you can listen to it. You spoke Amharic at the house and your parents only spoke Tigrinyan with each other …"

28. Dr Poole addresses the issue of Amharic language in Eritrea, in general terms observing that the Eritrean migrant community resident in Ethiopia usually spoke Amharic as a means of integrating with the dominant Amhara. He further observes: "It is quite plausible and quite usual that the appellant and her family spoke Amharic rather than Tigrinya". What he does not address is the fact that the evidence before him indicated that the parents spoke only Tigrinya between each other. I am satisfied that the challenge to the judge's reasoning regarding the appellant's language competence is a disagreement and that the adverse inferences he drew were open to him on the evidence.

29. The third challenge relates to identity documents, which he considers at [31] to [40], both as to the ability of the appellant to obtain an Ethiopian ID card and a passport as a consequence, her ability to travel on that card and his concerns about the manner in which the identity documents of her family members obtained after the asylum interview came into being.

30. In her challenge, Ms Hunt argues:

    (i) The judge erred in failed to credit the veracity of the appellant's account by mentioning that she gave the names of her family members in Eritrea at her screening interview, which were corroborated by the ID documents.

    (ii) The expert would have no ability or reason to comment on the fact that the identity cards were all issued in 1992, a similar point being made in respect of the mother's ID card being issued in Debrezeit and her father's in Addis Ababa.

    (iii) The judge had no evidence on which to find the appellant would not have met an Eritrean in Croydon (through whom contact had been made with her parents for their identity documents to be provided).

    (iv) The appellant had explained at interview that she did not know her parents' phone number and also that it was a risk for both her and them were she to make contact with them as she had left the country illegally. At the hearing under examination-in-chief the appellant confirmed that she had spoken to her brother on the telephone and that she had got the number from a friend in Croydon. It is argued

that there was no basis or evidence upon which the judge was entitled to find that contact with her family did not happen. The appellant was forced to try to substantiate a claim with evidence and she would be at risk herself had she not done so.

(v) The issue was whether the Ethiopian passport could be readily obtained fraudulently or not. The expert report had gone into detail on this. This was in the context of the judge having noted the expert evidence of the potential ease with which documentation could be obtained and the judge's observation that the expert did not claim or indeed know whether the documents obtained by the appellant were false or potentially genuine.

(vi) It was entirely illogical and unfair to draw a comparison between the use of the Ethiopian passport which did not relate to whether it was fraudulently obtained or not and the comparison with the Eritrean ID cards made by the judge as there was no documented history pertaining to those who travel outside Eritrea.

31. To my mind, these challenges are no more than disagreements. I do accept that if it is the appellant's case that her Ethiopian passport was obtained based on false information but it was a genuine passport, the regular use of that passport would not necessarily point to the reliability of the information that it said about itself. But that was not the only basis on which the judge was concerned about the documents. He was entitled to be concerned about the plausibility of the appellant having stated she had not contacted her parents because of the risks to her and them with the relative ease with which she was able to do so on meeting by chance a fellow Eritrean who had their telephone number. Ms Hunt confirmed the expert had not met the appellant and it is clear that he had not seen the passport. The judge was entitled to make the observations he did, having taken into account the evidence before him of the ease with which false documents can be obtained in Ethiopia.

32. Stepping back from these points of disagreement and considering the determination as a whole, I am satisfied that the judge gave cogent reasons for disbelieving the appellant which were open to him on the evidence disclosing neither irrationality nor perversity. The reasons under challenge were not the only reasons given by the judge for rejecting the account. In this context I do not consider his inaccurate assessment of the evidence regarding the role of the fellow housemates when the appellant made her escape sufficient to undermine the reliability of his conclusions as a whole. I am satisfied that the determination discloses no material error which requires the decision to be remade.

33. The appeal by the appellant in the Upper Tribunal is dismissed.

Signed Date 31 May 2013

Upper Tribunal Judge Dawson