IAC-AH-CAP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00055/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10 December 2013	**On 16 January 2014**

Before

UPPER TRIBUNAL JUDGE A MCGEACHY
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MISS D B
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Nason, Solicitor, Luqmani Thompson & Partners
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant's date of birth is 22 July 1995. She claims to be a citizen of Eritrea. She has appealed against a decision made on 15 December 2011 to refuse to grant asylum under paragraph 336 of HC 395 (as amended). Limited leave to remain was granted until 21 January 2013. The appeal was first heard at Hatton Cross on 6 March 2011 before First-tier Tribunal Martins who dismissed the appeal in a determination promulgated on 9 May 2012. Following that decision the appellant sought permission to

appeal which was granted by First-tier Tribunal Judge Nicholson on 29 May 2012. There was a hearing before this Tribunal on 19 September 2012 and we found that there was a material error of law. We concluded that there was a failure to give adequate reasons for material findings and a failure to consider Section 55 of the Borders, Citizenship and Immigration Act 2009. Accordingly, we set aside the determination and directed that the appeal proceed to a hearing de novo. We made directions including the preservation of the judge's finding that the appellant is a Pentecostal Christian.

2. This matter comes before us for a hearing de novo. We have been provided with the appellant's bundle of documents amounting to 283 pages together with a supplementary skeleton argument, a witness statement from Yosef Tesfaya Bereket , and a skeleton argument dated 9 December 2013. A supplementary bundle includes the Asylum Interview Record of Yosef Bereket, an expert report of Professor Kibreab and further objective material. The respondent relied on the bundle for hearing dated 9 January 2012. No skeleton argument was provided by the respondent.

The Issues

3. It was agreed that the central issue was the nationality of the appellant. In the event that we found her to be Eritrean it was conceded that the appeal should be allowed in light of the fact that the appellant was a Pentecostal Christian and she would be persecuted on return to Eritrea. If however the Tribunal concluded that she was an Ethiopian citizen, there was no basis on which she could sustain an argument that she faced a real risk of persecution on return to Ethiopia.

Appellant's Claim

4. The appellant's claim was set out in a chronology and three witness statements dated 10.10.2011 , 30.10.2011 and 27.2.2012. She was born in Assab, Eritrea in 1995. Her mother died in childbirth. At the age of 1 year she went to Ethiopia with her father and brother to live with her aunt in Addis Ababa. In 1999 her aunt married an Ethiopian and moved out of the family home. The appellant's father and brother returned to Eritrea in 2000 and have not been heard of since. The appellant remained in Addis Ababa living with her aunt until January 2011. Her aunt's marriage failed in 2010 and a friend of her aunt named Hiwot was arrested and imprisoned. The appellant then returned to Assab for approximately six months with her aunt. In her third witness statement dated 27 February 2012 the appellant stated for the first time that the reasons for leaving Ethiopia given by her aunt was because she was working secretly in order to help Eritrean people and passing messages between those coming in and out from Eritrea. Her aunt gave her no further information in relation to any specific group or organisation. The appellant understood that it was necessary for them to leave Ethiopia urgently because she thought that the Ethiopian authorities discovered her aunt's activities. The appellant travelled to the UK via Sudan.

5. The appellant spoke Amharic with her aunt at home and at school in Ethiopia. She lived in Assab for a limited period of time and was able to communicate with people in Amharic. She was unable to attend school because she could not speak Tigrinya. In her asylum interview on 14 October 2011 the appellant was able to answer questions about Eritrea.

6. The appellant relied on a letter from the Eritrean community in Lambeth which confirmed that she is an Eritrean national. Further, she attended the Ethiopian Embassy in 2012 regarding the nationality issue and was provided a document stating that there was insufficient information to issue an Ethiopian passport.

7. In oral evidence the appellant relied on her witness statements and in cross-examination she confirmed the chronology of events. She accepted that the reasons for leaving Ethiopia given to her by her aunt were first raised in her third statement because her aunt was very secretive and she had warned her that they would be in danger. She was in fear that there would be repercussions for her aunt whose whereabouts she did not know. In Eritrea the main concern was their religion but there was also concern that because of her aunt's activities in Ethiopia, this could have had an impact on their lives in Eritrea where everyone was afraid of the government. The appellant was uncertain as to what activities her aunt had been involved in but she understood that in Ethiopia she had helped Eritrean people. In Assab they lived in a house rented by her aunt. After a period of time her aunt commenced to run a hairdressing business. The appellant's uncle lived in Assab. She maintained contact with him but did not see him regularly. The appellant was asked in cross examination to explain why she had not been given any information about her brother when she was in Assab, given that Mr Bereket as supporting witness had said in his statement that he knew her brother in Assab in between 2004 and 2007. The appellant stated that she had not heard from either her brother or father since they left Ethiopia. Her uncle travelled a lot and did not spend any significant time in Assab. The appellant worked in the hairdresser's helping out her aunt who employed three other people in the salon who were Eritreans. Her aunt had savings from which she was able to pay for the rental for their accommodation initially and thereafter her aunt paid for the rent from her earnings. The appellant did not know who had paid for her travel costs to the UK. After her departure from Eritrea her aunt was imprisoned. Her uncle gave her a number to ring but she lost all her property when she arrived in the UK.

8. Mr Bereket gave evidence in support. He relied on his witness statement dated 28.6.2013 confirming that he was granted refugee status in 2011 and was an Eritrean national. His claim succeeded on the grounds of religion as a Pentecostal Christian. He lived in Assab between 2002 and 2007 where people generally spoke Amharic but also Tigrinya, Arabic and Affar. He lived in Sudan for 3 years and then travelled to UK in 2010. He met the appellant in around 2012 at church in King's Cross, London and discovered that he knew her family. He believed that he knew her brother, Yohannes as a friend from Assab since 2004. Their fathers were

friends. He recalled that her father had been arrested and imprisoned. He was told by her brother that that he had a sister living in Ethiopia. Yohnnes was living with friends and neighbours as he had no family members to look after him. He was certain that the appellant was Yohnnes' sister because there was a similarity in their looks, their descriptions of him were the same, Yohnnes told him that he had a sister in Ethiopia and they had the same surname.

9. In an expert report Professor Gaim Kibreab concluded that he was unable to say one way or another whether the appellant was an Eritrean national. While the appellant explained that she lived in Eritrea for only six to seven months of her adult life and the nature of her stay was very sheltered which accounted for her limited knowledge of the language and life in Assab. His main concern was the appellant's inability to speak Tigrinya and the answers provided by the appellant to his general questions regarding Assab. He found the appellant's knowledge of Eritrea to be limited although he accepted that this may well be influenced by her young age.

10. The psychological report from Dr Thomas concluded that the appellant is suffering from a severe episode of major depressive disorder and is at a high suicide risk. She suggested that she as she has a clear and deep attachment to her aunt, and that made absolute sense of her initial decision to withhold information about her aunt's political activities due to her strong wish to protect her aunt from further harm. Urgent specialist mental health input is recommended.

Submissions

11. Both representatives made submissions, the details of which are set out in the Record of Proceedings. Further detailed submissions from the appellant's representative are set out in the skeleton argument, which we have taken into account.

Findings of Fact and Conclusions

12. We have read the supplementary skeleton argument produced by the appellant's representative concerning the tracing duties of the Secretary of State towards unaccompanied minors, pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009. The skeleton argument fully sets out the relevant legal principles and recent case law which support the view that a failure by the Secretary of State to discharge the duty to endeavour to trace an asylum applicant's family members does not per se either vitiate the Secretary of State's determination of the asylum claim or any ensuing decision of the First-tier Tribunal or Upper Tribunal affirming such determination. Following the recent Court of Appeal decision of **EU and Others (Afghanistan) v SSHD [2013] EWCA Civ 32** we accept that in this instance that the issue of failure to trace is unlikely to be of significance whether the appellant is found to be a credible witness or not as to her nationality. In the event that the

appellant is found credible but still refused asylum, a failure to trace may become of significance. We consider that the determinative issue in this appeal is the appellant's nationality.

13. We take into account that the appellant was a young person when she entered the UK and when she made her claim for asylum. We find that whilst the appellant has given a consistent account of her life and upbringing in Eritrea and Ethiopia together with a consistent account of her family history, we do not find her account to be credible.

14. We accept that the appellant has been diagnosed with a depressive disorder however, the diagnosis does not corroborate her claim in any significant way. We take the view that it is equally possible that the appellant's depression has come about because of her circumstances and the stresses arising from her situation vis the immigration proceedings in the UK. Dr Thomas considers that the appellant's late disclosure of the reasons why she and her aunt left Ethiopia to be understandable in the context of her age, relationship with her aunt and anxieties about her aunt's whereabouts together with her depressive disorder. We place little weight on the findings in the report because Dr Thomas gives no consideration as to alternative causes for the appellant's mental state and consequently, we find her analysis of the appellant's motivation in her late disclosure to be lacking. Although it was argued in the grounds of application for permission [20] that the First Tier Tribunal failed to take into account the conclusion that the appellant was a "current high suicide risk", we do not regard this ground to have any merit. In any event the issue under Article 3 was not relied on or pursued before us and the report itself is out of date and we found it to be unreliable.

15. We place significant weight on the report of Professor Kibreab who specifically considered the appellant's circumstances living in Assab for a period of six to seven months at the age of 15. Professor Kibreab considered the appellant's explanation for her limited knowledge of Tigrinya and did not find it to be reasonable. We agree . We find there to be contradiction in the appellant's evidence. Whilst she has been able to provide basic geographical and social information about Eritrea, we place little weight on this evidence as such information can be accessed and learned, and is not indicative of her nationality. We find that the appellant's explanation for not attending school because she has limited knowledge of Tigrinya to be lacking. We accept that her religious beliefs may well have led to some confinement of her interests and life in Assab. However, she spent most of her time with her aunt and in the hairdressers helping out. We do not find it credible that the appellant would not have used the opportunity to speak to Eritreans in the hair salon and to pick up some basic knowledge of Tigrinya. We find the appellant is intelligent and articulate as demonstrated by the fact that she was able to give the majority of her evidence before us in the English language. We conclude that it would have been reasonable for the appellant to have learned some Tigrinya in her surroundings and furthermore that she would have been motivated to do so in order to be able to attend the local school. We

therefore do not accept the appellant's explanation for her limited knowledge of Tigrinya and of Assab. We do accept that there may well be many people living in Assab who speak Amharic, however, we do not find this a credible explanation for the appellant's linguistic limitations. We rely on the expert conclusion at paragraph 14 that:

> "As a person who says she is originally from Eritrea and lived in Eritrea for seven months, it is reasonable to expect her to have some understanding of the Tigrinya language, to know the answers to most of the general questions put to her regarding the city of Assab and Eritrea. It is reasonable to expect any Eritrean who lived in Assab even for a short period of time to be familiar with some of its prominent landmarks.
>
> The appellant's knowledge of the Tigrinya language, Eritrea's geography and politics are very limited. I expected her to be able to demonstrate some rudimentary knowledge than she did."

16. We raise concerns that the evidence of Mr Bereket was produced at such a late stage, given that the appellant has been attending the King's Cross church for some years. It seems a remarkable coincidence that she would not have discovered that Mr Bereket knew her brother and family prior to the summer of this year. In any event we place little weight on his evidence as we found it to be vague and general. There was no detailed information that Mr Bereket was able to provide to satisfy us that he knew the appellant's brother from Assab in 2004.

17. As to the documentary evidence of the letters from the Eritrean organisation, we place little weight on this evidence. We find no information or reasons given to support the conclusion that the appellant is an Eritrean citizen. Of particular note we find an absence of information as to how the assessment was made. In particular there is reference to a last resort mechanism for ascertaining the claimant's nationality which is the ability to speak Eritrean languages. Yet we find that there is no reference in the report to the fact that the appellant speaks Amharic and/or that she is unable to speak Tigrinya. It is unclear therefore how this assessment was made and we place no weight whatsoever on this letter. Equally lacking in evidential weight is the application form submitted to the Ethiopian passport office. We find the notes made on the form are minimal. It is unclear what evidence is relied on to support a conclusion that the appellant is an Eritrean national.

18. In summary, we find that the appellant is not an Eritrean citizen. We place weight and reliance on the conclusion of Professor Kibreab. We do not find it credible that the appellant lived in Assab with her aunt in the circumstances claimed. We do not accept that her aunt was involved in activities that brought her to the adverse attention of the Ethiopian authorities and in respect of which the decision was made to leave Ethiopia and travel to Eritrea. We do not find the account of the aunt's activities to be plausible. This was not information that was given by the appellant at the time of her initial asylum claim. We find that the

appellant would have known that this was of importance and significance at the time of making her claim notwithstanding her young age and that it was reasonable for her to have done so. We find that the appellant is a national from Ethiopia and that she can return to that country where she does not face any risk of persecution for any Convention reason. We conclude therefore that she does not qualify for refugee status and she does not qualify for humanitarian protection as she can return to Ethiopia and join her family.

19. We find that Article 3 ECHR (and /or on medical grounds) is not engaged. We rely on our conclusions and findings above. The appellant can return to Ethiopia where she will be able to practise her religious faith and live a normal life with her family. There is no evidence and it is not submitted that the appellant has a claim under Article 8 ECHR. She has not established any private life in the UK; she has lived here for a relatively short time only.

20. Decision

We dismiss the appeal on asylum grounds.

We dismiss the appeal under humanitarian protection grounds.

We dismiss the appeal on human rights grounds.

Signed Date 14.1.14

Deputy Upper Tribunal Judge G A Black

Direction Regarding Anonymity – Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her 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.

No fee award – exempt.

Signed Date 14.1.14

Deputy Upper Tribunal Judge G A Black