Upper Tribunal
(Immigration and Asylum Chamber)
Appeal Number:
AA/11360/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 14 August 2017	**On 29 August 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

ABRAHIM KIBROM AFERWORKI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARMENT

Respondent

Representation:

For the Appellant: Mr Katani, Solicitor
For the Respondent: Mr M Matthews, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Blair promulgated on 24 March 2017, dismissing his appeal against the decision of the respondent made on 4 August 2015 to refuse him asylum and to remove him from the United Kingdom.

2. The appellant's case is that he is a citizen of Eritrea and is a Pentecostal Christian. He was born in Assab (now in Eritrea) but at the age of 2 moved to live in Addis Ababa where he lived with his parents until they were deported to Eritrea in 1999. He left Eritrea in 2000, travelling to Sudan where he lived and worked for thirteen years before travelling to Libya and thence to Italy, France and finally the United Kingdom, entering on 23 March 2015.

3. The appellant's case is that he is a Pentecostal Christian and a draft evader and fears persecution on return to Eritrea on that reason.

4. The respondent's case is set out in the refusal letter of 4 August 2015. In summary, the respondent did not accept that the appellant is Eritrean but that, given that his primary language is Amharic and his knowledge of Ethiopian athletes [38] yet he was a national of Ethiopia and, that following ST (ethnic Eritrean – nationality – return) Ethiopia CG [2011] UKUT 00252 the burden was on him to show he had done all that he could be reasonably be expected to do to facilitate return as a national of Ethiopia. The respondent did not accept that he was at risk if returned to Ethiopia.

5. The appeal first came before First-tier Tribunal Judge Fowell sitting in Glasgow on 20 June 2016. In a decision promulgated on 8 August 2016, the appellant's claims were dismissed. An appeal against that decision to the First-tier Tribunal was successful and the matter was then remitted to the First-tier Tribunal when it came before Judge Blair sitting on 28 February 2017.

6. In his decision promulgated on 24 March 2017, the judge found that the appellant:-

   (i) had not established that he is Eritrean [23], it being wholly implausible that he would not have been spoken to by his parents in Tigrinya given his claim that they were deported to Eritrea because of their assertion of Eritrean nationality [25];

   (ii) had given answers to questions about Eritrea which were correct in substance, but had referred to a graveyard in Saris where there were statues of athletes erected in 2002; and, his explanation of being able to identify a statue not erected until that date when he had left Eritrea in 2000 (that he had read about it in a magazine) was implausible [28], rejecting the explanation given [29];

   (iii) had not done all he could reasonably have done to facilitate his return as a national of Ethiopia, the evidence being wholly unsatisfactory [30] both as in relation to travelling to Ethiopian Embassy and what he said had occurred there [31] to [33]; going to an embassy, telling an official that one is a national of that country without evidence was not taking reasonable steps to establish Eritrean (sic) nationality [36], the letter from the appellant's solicitors to the Ethiopian Embassy had been of little value [37];

   (iv) have given evidence of his visit to the Ethiopian Embassy which was evasive and vague [44] from which he concluded that the appellant knows he is an Ethiopian.

7. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge had erred:-

(i) in failing to say that how he had taken into account the fact that Amharic is spoken to a degree in Eritrea into assessing the appellant's nationality, in particular failing to take into account evidence that it is spoken as a first or second language in Eritrea particularly by those who had previously lived in Ethiopia and in the area of Assab both which applied to the appellant;

(ii) in finding that Tigrinya would be more likely to be spoken by those in that part of Ethiopia which later became Eritrea for which there was no evidential basis, and that the approach to the appellant not speaking Tigrinya was inconsistent when assessed against the witness who gave evidence in Amharic and had been recognised as a refugee from Eritrea;

(iii) in making errors of fact, in referring to the statues being in Eritrea when they were in Ethiopia; that it was speculative to conclude that it was not plausible the appellant had just happened to read in a magazine about the athletes in question;

(iv) in expecting the appellant to amend his interview in respect of a question he was never asked; and

(v) in failing to identify what reasonable steps the appellant could have taken when going to the embassy at a time when the appellant's evidence was he had no evidence to provide and in failing to apply the country guidance in **ST**.

The Hearing

8. I heard submissions from Mr Katani for the appellant and Mr Matthews for the respondent. Mr Katani submitted that the background evidence, an extract from an EASO report, showed that Amharic was spoken in Eritrea as a first or second language, particularly amongst those who have been removed from Ethiopia and from those who lived in the area of Assab owing to its prior importance as an Eritrean naval base. He submitted further that given the appellant's evidence was that his parents had spoken to him in Amharic the judge had indulged in impermissible speculation.

9. Mr Katani submitted also that the judge had erred in stating that the statues offered to athletes had been in Eritrea when they had in fact been in Ethiopia.

10. With respect to the issue of attendance at the embassy, Mr Katani submitted that the judge had made no reference to the relevant country guidance and had expressly gone against country guidance in stating that the latter written by the appellant's solicitors was of little value. That, he submitted, was impermissible and that nothing could fairly be drawn from the fact there had been no response to that letter.

11. Mr Matthews submitted that if the appellant could show he was not Ethiopian, the other grounds were not material. He submitted that it had

been open to the judge to say that the letter written by Katani & Co was of little value given that the letter does not even mention the name of the parents, give any details of where and when they were born or of a sister who is said to have been born in Addis Ababa. He submitted that the judge had properly followed ST (Ethiopia), adding that any linguistic analysis was not determinative of the issues. He submitted in any event the judge had not erred in making facts with respect to the issue of the statues and this appeared to be simply a slip of the pen; this was clear when reading the determination as a whole. He submitted further that on reading the interview it was clear from what the appellant had said that he was giving the impression of having recalled having seen the statues not that he had read about it in a magazine that this subsequent explanation was in the context of the evidence one which the judge was entitled to project.

12. In response Mr Katani submitted that the judge's rejection of the letter to the Ethiopian Embassy was wrong either because he had rejected it improperly on the basis that there had been no response or if that had not been the reason, then no adequate reasons had been provided. He submitted further that the judge had not referred to the wrong country at paragraph 27.

The Law

13. It was in the circumstances for the an appellant to show that he is not an Ethiopian national - see the guidance given in **ST (Ethiopia)**. Of particular relevance in this appeal is the following: -

(4) Although, pursuant to MA (Ethiopia), each claimant must demonstrate that he or she has done all that could be reasonably expected to facilitate return as a national of Ethiopia, the present procedures and practices of the Ethiopian Embassy in London will provide the backdrop against which judicial fact-finders will decide whether an appellant has complied with this requirement. A person who is regarded by the Ethiopian authorities as an ethnic Eritrean and who left Ethiopia during or in the immediate aftermath of the border war between Ethiopia and Eritrea, is likely to face very significant practical difficulties in establishing nationality and the attendant right to return, stemming from the reluctance of the Ethiopian authorities to countenance the return of someone it regards as a "foreigner", whether or not in international law the person concerned holds the nationality of another country (paragraphs 93 to 104).

(5) Judicial fact-finders will expect a person asserting arbitrary deprivation of Ethiopian nationality to approach the embassy in London with all documentation emanating from Ethiopia that the person may have, relevant to establishing nationality, including ID card, address, place of birth, identity and place of birth of parents, identity and whereabouts of any relatives in Ethiopia and details of the person's schooling in Ethiopia. Failing production of Ethiopian documentation in respect of such matters, the person should put in writing all relevant details, to be handed to the embassy. Whilst persons are not for this purpose entitled to portray

themselves to the embassy as Eritrean, there is no need to suppress details which disclose an Eritrean connection (paragraph 105).

14. Whilst the judge does not expressly direct himself in accordance with **S**T, although that is a country guidance decision, it is not an error of law not to refer to it so long as the principles are applied. It should be borne in mind in this context that the appellant was advised specifically in the refusal letter to have proper regard to the guidance given in ST in any future appeal. Further, it is of note that the judge at [30] expressly uses the language of ST in stating "I did not consider that the appellant had done all that he reasonably could to facilitate return as a national of Ethiopia." His rejection of that claim is set out in the subsequent paragraphs [31] to [36]. It is, I consider, artificial to focus narrowly on the judge's finding at [37] that he found the letter from Katani & Co addressed to the Ethiopian Embassy to be of "little value. There was no response to it." That letter must be considered in the context of the risks of the evidence.

15. I turn to the grounds in order.

16. I find no merit in the submission that the judge erred materially in not taking into account the fact that Amharic is as the evidence shows, spoken in Eritrea as a first language by some particularly those removed from Ethiopia and also in the area of Assab which was formerly under close Ethiopian control. The point that the judge made was not that it was implausible that the appellant would not have spoken Tigrinya per se but because he found it implausible that his parents, of Eritrean origin, and who had asserted their nationality would not have spoken Tigrinya. That is a different point. It cannot be said that that was not a point open to the judge on the evidence nor is that finding on plausibility grounds attacked in the grounds of appeal; it is not the fact of the appellant not speaking Tigrinya which is an issue but the reason why he does not speak Tigrinya in the particular context of what he has said about his parents. I note, however, that he said that they spoke some words in Tigrinya (see Q.21 and 22) the answer – that they did not want to be identified so speaking Tigrinya and would speak Amharic, does not explain why they did not speak Tigrinya in the home and the evidence is also that if it was "any specific thing, they would speak in Tigrinya".

17. I do not consider any inferences can be drawn from the judge's comments at [26] as this does not appear to form part of the reasoning process.

18. I do not accept that the judge has made any material factual errors in his analysis of the evidence about the statues. The root of this issue is the appellant's statement in interview at Q.48. I set out Q.48 and 49 in full:

Q.48 Do you remember the name of the stadium?	No I do not know. In Saris there is by the graveyard, there is a statue of two athletes.
Q.49 What type of athletes?	Mamo Woldie and Abebe Bekila.

19. It is not in dispute that these statues were erected in 2002 long after the appellant had left Ethiopia or for that matter Eritrea.

20. I do not consider that it can fairly be said that the judge wrongly referred to Eritrea at [27]. The appellant did in his interview give evidence about what he saw in Ethiopia in the area where he lived at Q.26 to Q.53 particularly and asked about landmarks. These answers are I consider somewhat limited but it is equally clear that he did give more details about living in Assab which he described at Q.64 and at Q.80 to Q.97 where he gave details about the currency and the revolution which, it is accepted are correct. That is entirely consistent with the statement at [27] that the answers to questions were correct in substance. Although it could have been more clearly identified, it is sufficiently clear from the decision that the judge is now, after making that point and having properly referred to Eritrea (a credibility issue) turning to issues which damage credibility particularly the issue regarding the statues. It cannot be said that the judge was wrongly concluding that the statues were in Eritrea.

21. Whilst there was a degree of ambiguity at [28] in the judge referring to the appellant having left Eritrea in 2000, I do not consider that this, even if it is an error, makes any material difference. The issue is not where the statues are located but why the appellant was able to describe them and more importantly to volunteer information about them when they were not erected until he had on any account left either Eritrea or Ethiopia. It matters not where they were located; the difficulty is in the appellant being able to describe their existence in a place he was asked to describe after he had left the country and had not returned.

22. Further, it is clear from the context that the appellant was volunteering information. It is also clear from the context of the questions that he was being asked to describe an area. He gave information that there were statues of two individuals. It is not in doubt that they were not erected until 2002. It is unclear why he would have mentioned these two statues if they had not existed at the time he had lived in the area. I consider that in all the circumstances and in the context, that the judge was entitled to reject the explanation; the challenge comes nowhere near showing that the finding was irrational or otherwise unsustainable.

23. The further challenges to the judge's findings on this issue are lacking in merit. The judge had given adequate reasons for saying why he did not accept that the appellant had read about the statues in a magazine given the context in which the information was given in the interview.

24. Further, the submission that the judge erred in drawing inferences adverse to the appellant from not amending his interview in respect of a question he was not asked is misplaced. At [29] the judge found that the explanation about the interpreter not having explained matters properly to the appellant was implausible. This is not a drawing of an inference from an appellant to fail to give further information or to clarify matters; it is in the context of the allegation of the interpreter not explaining matters that there is a reference to him amending the interview and the judge is

correct in pointing out that it was not for the interpreter to explain matters but rather for the appellant to give answers consistent with his actual lived experience. I consider that these comments are not irrational and were manifestly open to the judge.

25. The judge was entitled to conclude that he did not accept the appellant's account of his travel to the Ethiopian Embassy. No issue is taken in the grounds with a lack of evidence of travelling there, the Megabus ticket having no details on it or identifying the appellant; the implausibility that the consular official would have allowed himself to be photographed with someone attending in relation to questions about their nationality; the failure to provide the business card from the consular official [32] and take on the contradiction in his evidence why the business card had been obtained [33]; and, that it was not a reasonable step to establish Eritrean nationality (by which it is clear that the judge meant Ethiopia nationality) [36] without taking evidence.

26. I accept that the appellant may not have evidence as to his nationality, but as Mr Matthews submitted, the letter written to the embassy is lacking in any proper detail. The appellant's parents' names are not given nor are their dates of birth nor are any other details about them whatsoever. I consider that in all the circumstances given the previous justifiable concerns about the account of travelling to the embassy, that the judge was entitled and gave adequate and sustainable reasons for finding that the appellant had not taken reasonable steps to establish Eritrean nationality.

27. In this context, it was open to the judge to conclude that the fact of the letter had been sent by Katani & Co to the Ethiopian Embassy was of little evidential value. It is not correct to say that there is no adequate explanation for this; on the contrary it is clear from the context of the previous sustainable doubts as to whether the appellant had in fact attended the Embassy why that is so. Further, and in any event, the fact that the letter is not answered is not probative. It is at best neutral and is part of a factual matrix in assessing whether reasonable steps have been taken, and the judge was manifestly entitled to conclude that they had not.

28. Given the evidence and given the deficiencies identified albeit that these were not expressly referred to in the same terms in the decision, the judge's reasons for rejecting the appellant's claim to have taken reasonable steps is entirely justified. It is evident that he was properly applying the principles set out in **ST**.

29. For these reasons, I consider that the decision does not involve the making of an error of law and I uphold the decision of the First-tier Tribunal.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it. No anonymity direction is made.

Signed Date: 16 August 2017

Upper Tribunal Judge Rintoul