



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: PA/07177/2018**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 19 July 2019**

**Decision & Reasons Promulgated  
On 28 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**B  
(ANONYMITY DIRECTED)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr B Clark (legal representative)

For the Respondent: Ms E Groves (Senior Home Office Presenting Officer)

## **DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 12 February 2019 (the date of its written reasons) following a hearing of 11 February 2019 and which it sent to the parties on 25 March 2019. The tribunal decided to dismiss the claimant's appeal against a decision of the Secretary of State, of 25 May 2018, refusing to grant her international protection.

2. The tribunal granted the claimant anonymity. Nothing was said about that before me but I have decided, in those circumstances, to maintain the status quo. Accordingly, the claimant continues to benefit from a grant of anonymity.

3. By way of background, the claimant was born on 5 December 1985. She says that she is a national of Eritrea and that she was born in that country. The Secretary of State, however, believes her to be a national of Ethiopia. The claimant says she has lived in various countries apart from Eritrea including Sudan and Greece, and that she travelled through various other European countries prior to entering the United Kingdom (UK) clandestinely on 28 November 2018. It is recorded that she claimed asylum the day after that. In pursuing her claim, she said that she had been born and had lived her very early years in a part of Eritrea called Assab; that she is a Pentecostal Christian; and that she would be persecuted by the authorities in Eritrea due to her religion. The Secretary of State concluded that she was not from Eritrea (so her claim to be at risk upon return to Eritrea fell away) but did accept that she is a Pentecostal Christian.

4. The claimant was not represented before the tribunal but the Secretary of State was. The tribunal noted that the claimant had previously had the assistance of solicitors who had withdrawn some six days prior to the hearing. But the tribunal also noted that the claimant did not invite it to adjourn and it has not subsequently been criticised for not doing so. It explained why it was dismissing the appeal in its written reasons of 12 February 2019. It is apparent, from that, that it did not find the claimant to be credible and it did not accept that she is a national of Eritrea. This is what it had to say about all of that:

"26. I find that there are a number of aspects of the appellant's evidence which tend to weigh against the credibility of her account of being an Eritrean national.

27. Firstly, the appellant's first and only language is Amharic. The appellant has very limited knowledge of Tigrinya. The background materials suggest that Tigrinya is the dominant language in Eritrea.

28. The appellant's evidence on this Issue [sic] is to the effect that the dominant language in Assab, where she lived for a time was Amharic, and that her parents spoke Amharic to her.

29. I do not find that to be a satisfactory explanation for the appellant's lack of knowledge of Tigrinya. That is because the background materials do not support her assertion that Assab is an Amharic speaking region and is a matter on which it is reasonable to take the view that her previous solicitors would have been able to obtain expert evidence or identify materials in support of that aspect of the claim. There is no such evidence before me.

30. Further, I find that the appellant's account of her parents speaking to her in Amharic to be implausible when placed in the context of other aspects of her evidence. In particular, in oral evidence the appellant said that her parents spoke to other family members in Tigrinya. The appellant has not put forward a reasonable explanation

showing why her parent s would speak to the appellant in Amharic but to other family members in Tigrinya. Further, the appellant's evidence tends to suggest that that [sic] the appellant's father was a supporter of those trying to establish and maintain a distinct Eritrean identity. In this context, given the importance of language in maintaining a sense of cultural and racial identity, I find it not reasonably likely that the appellant's parents would not have encouraged the appellant to use the Tigrinya language, at least to an extent greater that is evidenced by the appellant.

31. Second, a further feature of the appellant's evidence that tends to weigh against the credibility of her account are the inconsistencies in the dates she gives for various events.

32. Thus, the appellant maintained in interview and in oral evidence that she had lived In [sic] Ethiopia for 14 years. However, she also said that she went to live in Ethiopia in 1987 and returned to Eritrea in 2000, which is a period of 13 years.

33. By way of further example the appellant maintained in interview and in oral evidence that she went to Ethiopia at the age of 3 in 1987. However, the appellant was born on 5 December 1985 and, therefore, at best would have been 2 years of age, if not younger.

34. By way of further example, the appellant said in interview that she had returned to Eritrea in 2000 at the age of 15 years. However, she also said that she had lived In [sic] Ethiopia for 14 years from 1987, which would have meant that she had returned in 2001 rather than 2000.

35. By way of further example, the appellant said in interview that her father had been detained and beaten by the authorities in 2002. However, in oral evidence the appellant at first said that her father had been arrested in 2000 and 2002. On further questioning, the appellant said that her father had been arrested on two occasions in the fifth month of 2002. However, in interview that appellant said that her father had been arrested in July 2002. When asked in oral evidence for an explanation of the difference in the accounts, the appellant simply repeated that the fifth month was the correct date.

36. In addition, the appellant also said in oral evidence that following her father's arrest she had looked after him until he died about 3 to 4 months after his arrest. If that were the case that would place the appellant's father's death as having occurred in the eighth or ninth month of 2002. However, the appellant also said in interview that her father died in June 2002.

37. The various discrepancies in the appellant's account were put to her in oral evidence. In respect of some of the questions asked about the discrepancies, the appellant was evasive, did not address the question directly and referred to other matters, or simply repeated what she had said earlier, seemingly as a matter of rote.

38. In respect of some of the discrepancies, the appellant claimed that the interpreter had erred. However, the evidence before me does not include representations made by her previous solicitors seeking to correct significant errors in the respondent's records.

39. A further explanation put forward by the appellant for the differences in her account is that the events occurred so many years ago, when she was young and so she cannot be expected to precise [sic] about the dates.

40. I do not find that to be a satisfactory explanation. That is for a number of reasons. I find that in oral evidence before me, wherein she often repeated particular phrases, without giving a fuller account or being able to put matters in a different way, when coupled with her evasiveness as noted above, tend to suggest that the appellant is putting forward an account whereby she is rehearsing an account that she has learnt by rote, rather than an account of her actual experiences.

41. The third aspect of the appellant's account that tends to undermine her credibility are the answers that she gave at her screening interview. In particular, the appellant was asked to explain briefly all the reasons why she was seeking asylum. The appellant's recorded response includes references to the fairness in the system in the United Kingdom and difficulties in Sudan. Strikingly, no reference is made to the appellant fearing persecution in Eritrea due to her religion.

42. I find this response and lack of reference to her religion to be particularly striking because in oral evidence, the appellant claimed that her religion was the fundamental reason why she was claiming asylum. In oral evidence the appellant was asked about this omission. In response she said that she had sought to correct the record after the screening interview.

43. However, I note that the documentary evidence before me does not show that such steps were taken, at least not until the substantive interview six months after the screening interview.

44. Given what I say above, I find that there are a number of inconsistencies in the appellant's account. I find that whilst individually those inconsistencies may not be so significant, but when they are taken cumulatively, and when placed in the context of the evidence as a whole, including matters relating to the appellant's language, I find that they have the effect of undermining the credibility of the appellant's account of events and her circumstances.

45. Accordingly, I find that the appellant's evidence is not reliable. I do not accept any aspect of her narrative of events that are put in issue by the respondent. I make further findings of fact as necessary below.

46. I find that the appellant is not a national of Eritrea. However, I leave undisturbed the respondent's acceptance, at paragraph 56 of the refusal letter, that the appellant is a Pentecostal Christian.

47. I have considered whether or not there is sufficient evidence before me to determine the appellant's true nationality. I am of the view that there is insufficient evidence before me to make that determination. That is because, whilst there is a ready inference to be drawn that the appellant is an Ethiopian national, I take into account what the respondent says at question 161 of the interview record. There reference is [sic] made to the respondent having records showing that the appellant was deported in 1998. I have not seen that document and am not aware of its terms or the context of its production. Whilst the lack of that document has no material effect on the outcome of my decision given the extent of the evidence before me, nevertheless, it may have a bearing on the determination of the appellant's true nationality. In those circumstances, I am of the view that I am not in a position to make a positive finding as to the appellant's true nationality".

5. An application for permission to appeal to the Upper Tribunal followed. The claimant had the valued assistance of the Bradford Centre for Deaf People (it has not been suggested that she has significant hearing difficulties herself) and Mr Clark who is a retired solicitor well-known to the Upper Tribunal and the First-tier Tribunal for his past immigration appeals work in Bradford. Mr Clark's grounds (I paraphrase and truncate a little for brevity) may be summarised as follows:

Ground 1 – The tribunal attached too much weight to what had been said by the claimant in her screening interview bearing in mind the purpose and usual circumstances of such interviews.

Ground 2 – The tribunal attached undue significance to relatively minor discrepancies in the claimant’s account, many of which would be attributable to her being of a very young age when relevant events occurred.

Ground 3 – The tribunal unjustly concluded that the claimant’s family members would not have spoken to her in Tigrinya.

Ground 4 – The tribunal did not sufficiently consider the nationality aspect, simply relying upon its general adverse credibility finding for its conclusion as to nationality.

6. Permission to appeal was granted on those grounds. The matter was then listed for a hearing before the Upper Tribunal (before me) so that it could be considered whether or not the tribunal had erred in law and, if so, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative. In fact, Mr Clark applied to amend the grounds to add a fifth ground of appeal. Ms Groves did not oppose his application which I granted. That then added a further ground to the effect that the tribunal had erred through failing to consider what were said to be favourable answers given by the claimant in her substantive asylum interview with respect to her claim to be from Assab. I have taken full account of the written material before me and the oral submissions made to me in deciding the error of law issue in this appeal. I have, in fact, decided that the tribunal did not err in law so that its decision shall stand. What follows is my explanation as to why.

7. As to Ground 1 it is right to say, as does Mr Clark, that generally speaking caution ought to be exercised before taking adverse credibility points against a claimant on the basis of what has been said or what has not been said in a screening interview. The tribunal did not remind itself of the need for caution and there might be a case to say that, ideally, it ought to have done so. But the tribunal’s point here was to the effect that the claimant had been asked about the basis for her claim for asylum and she had made no mention of a fear of religious persecution which is, in fact, the fulcrum of her claim. The tribunal explained, at paragraph 42 of its written reasons, why it thought that omission was of significance, confirming its view that it found the omission to be “particularly striking”. In my judgment the tribunal was entitled to treat the claimant’s credibility as being damaged on the basis of her failure to mention the centrepiece of her claim, albeit that that failure was in a screening interview rather than, for example, at a substantive asylum interview. It was not acting unlawfully in so doing.

8. It is true that the claimant was, at various points, recounting events which occurred when she was very young and events which, realistically, she might not have any recollection of at all. To that extent the point made in Ground 2 is an understandable one. But the tribunal, in assessing the claimant’s credibility, went further than simply identifying inconsistencies. At paragraph 37 of its written reasons it noted what it found to be evasiveness. At paragraph 40 it noted a tendency to repeat “particular phrases” and an impression that she was “rehearsing an account that she has learnt by rote”. Mr Clark argued before me, in effect, that one person’s evasiveness is another person’s nervousness. I understand why he says that. But the tribunal is experienced at hearing evidence from claimants and forming conclusions as to that evidence. In my judgment, at paragraphs 37 and 40, that is exactly what this tribunal was doing. It was, in effect, utilising its expertise. I have concluded, therefore, that the tribunal did not err in its general assessment as to credibility.

9. As to Ground 3, in my judgment this is really no more than a disagreement with the tribunal's finding and the offering of a different way of looking at the evidence. But none of that establishes error on the part of the tribunal. The tribunal had not been offered any background country material demonstrating that Amharic (the language the claimant speaks) was spoken in Assab as she claims. That was, it seems to me, the principle reason for the tribunal's conclusion that it was not credible that she speaks Amharic and not Tigrinya, yet is still from Assab in Eritrea. But its other reasoning, perhaps supplementary to that, that Tigrinya would be spoken at least to an extent in her household if she was telling the truth about her family origins and her location as a child, so that she would have grasped something of the language, was nevertheless open to the tribunal. So, that ground of appeal is not made out.

10. As to Ground 4, the primary issue for the tribunal was the claimant's general credibility and then, of course, the truthfulness or otherwise of her account. It was a key part of her account that she was from Eritrea. The Secretary of State had made it clear that that was disbelieved. The claimant was, indeed, found not to be credible and, on that basis, it was open to the tribunal to decide that she did not have the nationality she claimed to have. But in any event, it did consider specific issues relevant to nationality by considering the language she spoke. That ground is not made out.

11. There is then the fifth ground of appeal which was added by way of an amendment at the hearing before me. Mr Clark helpfully provided me with a typed sheet setting out what he contended were indications by the claimant, in the course of her asylum interview, of knowledge of Assab and Eritrea. His argument was to the effect that the tribunal had not attached weight to those indications and, indeed, had not said anything about them at all. Ms Groves argued in response that whilst some interview answers had been given which might support the proposition that the claimant is from where she says she is, other answers had been given which suggested the opposite. She also argued that the tribunal had not been required to refer to each and every item of evidence before it in order to explain its decision.

12. It is the amended ground which has caused me the most concern. I accept Mr Clark's contention that certain of the answers might be thought to support the claimant's contentions as to where she is from. I accept Ms Groves submission that certain of those answers might suggest the opposite conclusion. I also accept that, in general, a tribunal is not required to refer to all aspects of or items of the evidence before it when it explains its decision so long as, overall, its reasoning is adequate. I do think it would have been better had the tribunal said something about what view it had formed as to the answers the claimant had given in reply to questions which were clearly intended to test her knowledge of Assab and Eritrea generally. But, in my judgment, in circumstances where there were answers tending to point to opposite conclusions, it was not actually required, as a matter of law, to carry out that evaluation as a discrete part of its overall, and what was in my view relatively wide-ranging and holistic assessment as to credibility. I must confess I have hesitated over this point but I have concluded that the tribunal did not err in law in the manner in which it is argued that it did in the amended ground of appeal.

13. I have concluded, therefore, that the grounds are not made out. That leads me to conclude that the tribunal did not err in law. Accordingly, this appeal to the Upper Tribunal is dismissed.

**Decision**

The decision of the tribunal did not involve the making of an error of law. Accordingly, the claimant's appeal to the Upper Tribunal is dismissed.

The First-tier Tribunal granted the claimant anonymity. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall identify the claimant or any member of her family. This grant of anonymity applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

**Signed**

**M R Hemingway  
Judge of the Upper Tribunal**

**Dated**

**20 August 2019**