IAC-CH- CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02620/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Determination Promulgated**
On 24th October 2014	**On 11th November 2014**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

BTT
(ANONYMITY DIRECTION MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rebecca Harrington, Counsel
For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims to be a male citizen of Eritrea, born 1 January 1994. He claimed asylum, but his claim was rejected by the respondent in April 2014. He appealed that decision and a decision to remove him from the United Kingdom. The appellant claims to have left Eritrea in 2002 when he travelled to Sudan. He stayed there for 3 years before moving to Ethiopia where he stayed for 9 years before travelling back through

Sudan, Libya, Italy and France arriving in the United Kingdom in February 2014.

2. In claiming to be Eritrean the appellant also claimed to be a Pentecostal Christian. He suffered persecution as a result. The respondent (following a SPRAKAB Analysis) was of the view that the appellant was from Ethiopia based on questions relating to religion and was of the opinion that he was not a Pentecostal Christian.

3. The appellant appealed that decision. His appeal came before Judge of the First-Tier Tribunal Woolley sitting at Newport on 23 May 2014. An oral hearing was held. Both parties were legally represented.

4. In a determination dated 28 May 2014 Judge Woolley dismissed all aspects of the appellants claim.

5. The appellant sought leave to appeal. Error on the part of the judge is alleged in three aspects of the determination. Firstly the treatment of the SPRAKAB Report, secondly on the appellants knowledge of Eritrea and Assab, and thirdly that aspect of the appellants case that involved his flight from Eritrea in 2002.

6. The appellants application came before Judge of the First-Tier Tribunal McDade who granted leave having summarised the grounds Judge McDade said “These issues are arguable. There is an arguable error of law”.

7. Hence the matter comes before me in the Upper Tribunal.

8. Ms Harrington indicated that the appellant was present, but spoke virtually no English.

9. Ms Harrington relied upon the grounds seeking leave. In respect of Ground 1 based upon the SPRAKAB Report she referred to paragraph 27 of the determination. The issue was one of the weight to be attached to the report bearing in mind the CV of the Analyst and the mistakes contained within the report. These mistakes should have affected the weight attributed to the report. In addition the judge had not considered (at paragraph 27) the social history of the appellant and that the judge had failed to acknowledge the “objective evidence” referred to in paragraph 7 of the grounds seeking leave. The judge’s appraisal of the report is not sufficient considering the appellants background and also the background of the SPRAKAB Analyst.

10. Ms Harrington then referred to paragraph 28 of the determination with regard to the appellant’s knowledge of Eritrea and Assab in particular. The judge’s findings implied that the appellant had time to learn answers. In fact he only had twenty minutes. This point had not been put to him.

11. Finally Ms Harrington referred to paragraph 29 of the determination with regard to the appellants claimed Pentecostal belief. She considered the judge had fallen into error with regard to the situation as to Pentecostalists in Eritrea. Reference was made to paragraph 11 of the grounds seeking leave with regard to the arrests of as many as 3,000 people from unregistered religious groups. This was a misunderstanding on the part of the judge that may have led to a different conclusion.

12. Ms Harrington submitted that individually and collectively the errors were material in that they would have affected the outcome of the appeal.

13. Mr Richards in reply submitted that there was no error of law. The judge had properly dealt with the SPRAKAB Report. He clearly had adopted a cautious approach and had directed himself properly. Only after doing this did he consider the report and the amount of weight that should be attributed to it.

14. Mr Richards submitted that a twenty minute gap would be sufficient time to gain information.

15. As to the point regarding the contents of the refusal letter (paragraph 29) Mr Richards indicated that the appellant was of course legally represented at the hearing and any incorrect point taken in the refusal letter could have been drawn to the judge's attention. It was not an error on the part of the judge.

16. In conclusion Mr Richards indicated that it was an extremely detailed determination and the judge was entitled to come to the conclusions that he did.

17. Ms Harrington chose not to respond.

18. At this stage I indicated that for the reasons now given I found no material error of law contained within the determination.

19. The first issue relates to the SPRAKAB Report and the weight that should be given to the Analysts view as to the appellant's nationality. Consideration of the appellant's nationality commenced at paragraph 24 of the determination and continued until the end of paragraph 28. Paragraph 24 clearly shows that the judge had at the forefront of his mind the appellants claimed nationality.

20. Judge Woolley set out in some detail the contents of the report the weight that had to be attributed to the findings of the Analyst. Paragraph 26 is a clear self direction.

21. It has to be acknowledged that the judge did find some difficulties with certain aspects of the report. The judge identified certain errors or

misunderstandings and rejected that part of the report that offered opinion outside the remit of the Analyst.

22. Paragraph 27 found that weight could be placed on the SPRAKAB Analysts Report "subject to these reservations". The judge then went on in paragraph 27 to explain why the judge placed weight on the report to the extent of accepting its findings.

23. The judge (paragraph 28) went on to consider the appellants claimed knowledge of Eritrea in general and Assab in particular. The judge set out in detail the information given by the appellant before explaining why the appellant's credibility had been damaged.

24. In a very thorough and closely reasoned determination the judge properly directed himself to the evidence (including the SPRAKAB Report) and reached clear findings to which he was perfectly entitled. In each case the judges reasoning set out in detail. In particular the judge was entitled to reach the conclusion that the appellant subsequently gained information to support his claim and having reading the determination as a whole I can see no material error in a failure of the judge to put this point to the appellant. The overall outcome was not adversely affected from the point of view of the appellant.

25. Dealing now with the suggested error regarding the judge's findings with regard to the appellant's Pentecostal faith. Paragraph 29 deals with the appellants alleged flight from Ethiopia in 2002. It is arguable that the judge failed to take into account objective information (not evidence). The judge had before him the reasons for the refusal letter in particular paragraphs 23 onwards. However this aspect of the determination must be read in the light of the judges findings both as to the appellants nationality, his credibility (taking into account Section 8 of the 2004 Act) and with regard to "the appellants Pentecostalism".

26. Paragraph 33 of the determination deals with the appellants claimed religion. For the reasons set out in that paragraph the judge found that the appellant's credibility was again undermined. The judge found that the appellant knew very little about Pentecostalism outside the United Kingdom and the judge found that his answers were "vague and often incorrect". The judge was perfectly entitled to reach those conclusions. The concluding sentences of paragraph 33 found a "luke warm endorsement of his faith".

27. The judge then went on to consider in detail Section 8 of the 2004 Act before reaching conclusions on the "global conclusion on nationality" (paragraph 35). He then went on to consider (paragraphs 36 to 37) the risk upon return.

28. I therefore find no material error of law contained within the determination. The findings and decisions stand. This appeal is dismissed.

29. An anonymity direction had been made. No application has been made to remove that and it therefore continues in force.

Decision

30. Appeal dismissed.

Signed Date

Upper Tribunal Judge Poole **10th November 2014**