Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00995/2017**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On December 11, 2017	**On December 15, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MS WEYNESHET GUBENA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk, Counsel, instructed by JD Spicer Zeb Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction.

2. The appellant claimed to be an Eritrean national. The appellant entered the United Kingdom on November 7, 2015 and claimed asylum on November 8, 2015. The respondent refused her protection claim on January 20, 2017 under paragraphs 336 and 339F HC 395.

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3. The appellant lodged grounds of appeal on January 30, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal Smith MBE TD (hereinafter called “the Judge”) on March 2, 2017 and in a decision promulgated on April 7, 2017 the Judge refused her appeal on all grounds.

4. The appellant appealed the decision on April 21, 2017. Permission to appeal was granted on only the first ground by Judge of the First-tier Tribunal Holmes on August 16, 2017. Permission was refused on the other grounds raised. The respondent lodged a Rule 24 response dated September 20, 2017 in which she argues there was no error in law.

5. The matter came before me on the above date and the parties were represented as set out above.

SUBMISSIONS

6. Mr Schwenk relied on the grounds of appeal as drafted by “trial” counsel. He submitted there were five areas that he submitted highlighted an error in law although he conceded some of those grounds on their own may not be an error on their own. He submitted the Judge had erred as follows:

   (a) He referred to her language as Aramaic when in fact it was Amharic. There were also other grammatical errors which made any reading of the decision difficult and the appellant was entitled to understand why she lost her appeal.

   (b) The Judge attached no weight to an expert report contained at pages 59-59 of the appellant’s bundle (non-objective bundle). The expert stated that following a conversation with the appellant she was satisfied the appellant did speak Tigrinyan. Whilst he accepted the appellant had stated in her interview that she could not speak the language she had stated in her statement that she could. The Judge should have addressed this issue.

   (c) The Amnesty International Report 2005 referred to there being a crackdown on Pentecostal churches in May 2002 and arrests were made in early 2003. However, the Judge overlooked the fact the report referred to there being many more cases that had not been reported. The Judge also did not have regard to the fact the appellant was only 13/14 years of age when these events happened and her recollection may not be perfect.

   (d) The Judge wrongly attached weight to the fact she had not contacted the Red Cross and attached no weight to her age.

   (e) The Judge wrongly applied ST (Ethnic Eritrea-nationality-return) Ethiopia CG [2011] UKUT 252 and placed too high a burden on the appellant by requiring her to produce evidence of her schooling to support an application for Ethiopian nationality.

(f) The Judge attached no weight to the witness statement of Miss Tiku and wrongly referred to her as an asylum-seeker rather than as a person who had been recognised as an Eritrean refugee. His concerns about her evidence were never put to her.

(g) The Judge should not have made an adverse finding under section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Problems in Italy were well documented.

7. Mr McVeety relied on the Rule 24 statement and submitted the grounds had no merit and there were no errors in law. In response to the grounds argued by Mr Schwenk he submitted:

(a) The mistake over Aramaic and Amharic was a typographical error and the Judge was aware of the correct language as demonstrated in [12] and [18] of his decision.

(b) In her interview she stated she did not speak Tigrinyan but understood it. The fact she later altered her evidence and there was a statement from a witness saying she now spoke it did not detract from her original claim she did not speak the language.

(c) Mr Schwenk had mistakenly misrepresented the Amnesty International Report. The report made it clear that churches had to be registered from May 2002 and it was only in early 2003 that arrests were made. The article referred to arrests between 2003 and 2005 and there was no objective evidence to support a submission that arrests took place in 2002. As for the Judge not having regard to her age Mr McVeety submitted it had never been the appellant's case that she had made a mistake about the date of her father's arrest.

(d) The Judge had correctly followed both ST and MW (Nationality; Art 4 QD; duty to substantiate) Eritrea [2016] UKUT 00453 (IAC). MW had extended the test in ST to place a requirement on an appellant to provide documentation which was not in the appellant's present possession but was within her power to reasonably obtain. She had taken no steps to obtain school records and she had not even sent a letter to the Embassy, as required in ST, setting out what information she had to enable the Ethiopian authorities to consider her application.

(e) With regard to the witness he submitted that there was no material error in saying she was an asylum-seeker. The Judge had given reasons for rejecting her claim to have known her in Eritrea.

(f) As regards section 8 the Judge made it clear it was a factor to consider and the appellant had not claimed in France anyway which would also have engaged section 8.

8. Mr McVeety invited me to reject all grounds of appeal

9. Having heard submissions I reserved my decision.

FINDINGS ON THE ERROR IN LAW

10. The Judge heard in detail the appellant's appeal. A number of grounds were raised in the grounds of appeal. Mr Schwenk acknowledged there were some difficulties with aspects of the evidence and it is these difficulties that Mr McVeety argued undermined her credibility and provided substance to the Judge's decision.

11. Turning to the specific grounds I have considered the decision, the grounds of appeal, objective evidence and the representation made to me and for the reasons hereinafter given I do not find an error in law:

    (a) Grammatical errors are obviously best avoided but sometimes they still occur. I am satisfied that the errors over the language and some other minor mistakes would not have led anyone to be in any doubt about the Judge's findings. On their own such errors are not material.

    (b) In her asylum interview she made it clear she could not speak Tigrinyan but could understand it. She was interviewed on January 16, 2017 and at Q34 she stated "when my parents spoke to me in Tigrinya I used to respond in Amharic" and at Q45 she was asked "Can you speak Tigrinya" and she replied "I cannot speak, I understand a little". In her statement of February 20, 2017 she did not say the answer recorded was wrong but simply claimed she could speak some Tigrinya. The language expert evidence failed to address this issue and the Judge was entitled to ignore the report as it clearly conflicted with the appellant's own evidence. On the one hand she claimed she could not speak the language and on the other she claimed she could speak some. In assessing her credibility on this issue the Judge's finding was clearly open to him.

    (c) The Amnesty International Report made it clear that churches became illegal, unless registered, in May 2002. Arrests did not start until early 2003. The report that Mr Schwenk referred me to did not suggest that arrests began in 2002. The appellant had been specific about when her father was arrested and this was wholly inconsistent with the country evidence. Although she was a minor when the incident occurred it had never been the appellant's case that the error was due to her age. Even the grounds of appeal did not suggest this. Paragraph 3 of the grounds challenged the fairness of introducing the report but this was not an argument pursued by Mr Schwenk.

    (d) The point raised about the failure to engage the Red Cross was not material to the overall credibility.

    (e) In submissions Mr Schwenk argued on <u>ST</u> because this was what was contained in the grounds. The grounds failed to engage with what the more recent decision of <u>MW</u> had to say. The Tribunal made it clear in <u>MW</u> that the appellant had a duty to submit evidence that was reasonably obtainable. The Judge's finding was in line with <u>MW</u> and was open to him.

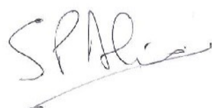
(f) The Judge's section 8 finding was a factor in the Judge's decision. He made it clear at [42] it was just one feature of the case and he must take care not too attach much weight to any adverse finding under section 8.

12. In short, this was a well drafted and considered decision and no material error either individually or collectively, has been identified.

DECISION

13. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the decision.

Signed Date 11.12.2017

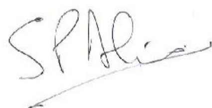


Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as the appeal was dismissed.

Signed Date 11.12.2017



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