



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

Appeal Number: PA/01151/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 November 2021**

**Decision & Reasons Promulgated  
On 12 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**RKG  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms V Easty, Counsel instructed by Duncan Lewis & Co Solicitors (Sackville House London)

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is appealing against the decision of Judge of the First-tier Tribunal Mulholland (“the judge”) promulgated on 12 May 2021 dismissing her protection and human rights claim.
2. This is her second protection and human rights appeal in the First-tier Tribunal. The previous appeal was dismissed by Judge of the First-tier Tribunal Page in November 2010.

3. The appellant claims to be a Pentecostal Christian from Eritrea who faces a risk of persecution if returned to Eritrea because of her religion and illegal exit from the country. She claims to be from the Assab region of Eritrea. The appellant's evidence is that when she was a baby she and her family moved to Ethiopia but she returned to the Assab region of Eritrea in 2000, at the age of 18, where she lived until she left illegally in 2010.
4. A central issue in dispute was whether the appellant is Eritrean, as she claims; or Ethiopian, as maintained by the respondent.
5. One of the key reasons given by the judge for not believing the appellant's claim to be Eritrean was that she spoke Amharic and not Tigrinya. In paragraph 36 of the decision the judge described her inability to speak Tigrinya as casting serious doubt on the credibility of her claim to be Eritrean. And in paragraph 60, where the judge summarised why he did not accept that the appellant is Eritrean, he emphasised her lack of knowledge of Tigrinya.
6. In the First tier Tribunal, the appellant relied on two witnesses who gave oral evidence, Ms Engeda and Mr Feseha. Both witnesses claim to be Eritreans from the Assab region of Eritrea who knew the appellant in Eritrea. Mr Feseha stated that he speaks Amharic and not Tigrinya, and that this is commonplace in his home area. His evidence was that he spoke to the appellant in Amharic when they both lived in the Assab region. Similarly, the evidence of Ms Engeda was that Amharic is commonly spoken in Assab, she speaks Amharic, and it is the language in which she conversed with the appellant.
7. Plainly, the evidence of Ms Engeda and Mr Feseha had the potential to be highly significant, because if they are truthful witnesses, their evidence suggests that it is not inconsistent with the appellant's claim to have lived between the ages of 18 and 28 in the Assab region that she does not speak Tigrinya.
8. The evidence of Mr Feseha is summarised by the judge in paragraph 56. The judge noted that Mr Feseha's evidence was that between 2004 and 2006 the appellant would visit his shop, where they would speak in Amharic. The judge observed that Mr Feseha claimed to have met the appellant in the UK in 2010, following which they spoke around once a month. The judge also stated that Mr Feseha claimed to be a Pentecostal Christian who on one occasion had met the appellant at a church in London.
9. In paragraphs 57 - 58 the judge evaluated Mr Feseha's evidence and concluded that it was not credible. Reasons given by the judge for not believing Mr Feseha, and consequently not attaching weight to his evidence, were: (a) Mr Feseha did not know the year the appellant had converted and baptised; (b) the appellant did not ask Mr Feseha to be a witness at the hearing in 2010 (despite meeting him one month before it); (c) he did not know the name of the appellant's church; (d) he does not

attend church and instead watches YouTube videos; and (e) it was inconsistent that Mr Feseha claimed to have seen the appellant and the appellant's brother in his shop between 2004 and 2006 when the appellant claimed that her brother went missing in 2006.

10. In paragraph 59 the judge summarised the evidence of Ms Engeda as being that she would regularly see the appellant in Eritrea (where they would speak in Amharic) and that they met in the UK in 2013 at the Red Cross offices. The judge noted that she did not know the name of the appellant's church and had not attended church with her. The judge concluded paragraph 59 by stating "there was nothing in cross examination that would undermine this account and it could be true."
11. The appellant advanced five grounds of appeal, all of which were pursued by Ms Easty at the hearing. However, having carefully considered the submissions of Ms Easty and Mr Melvin, I have reached the conclusion that it is only necessary to consider the first ground of appeal, as the error it identifies renders the decision unsafe such that it will need to be set aside and remade afresh.
12. The error, in summary, is that the judge failed to give sustainable reasons to explain why the crucial evidence of Ms Engeda and Mr Feseha about the appellant speaking Amharic with them in Eritrea (and the prevalence of this language, in contrast to Tigrinya, in their home area of Eritrea) was rejected.
13. With respect to Ms Engada, the judge has not given any reasons why she was not believed.
14. With respect to Mr Feseha, the judge has given several reasons for not believing him that do not withstand scrutiny.
15. First, the judge found it inconsistent with the appellant's account of her brother disappearing in 2006 that Mr Feseha stated that between 2004 and 2006 the appellant and her brother would come to her shop. I am unable to discern how the judge could characterise this as an inconsistency. Indeed, on any view, the evidence seems entirely consistent. Between 2004 and 2006 the appellant and her brother from time to time visited Mr Feseha's shop. In 2006 the appellant's brother went missing. I am satisfied that there is no rational basis upon which this can be described as an inconsistency.
16. Second, the judge found it damaging to Mr Feseha's credibility that he did not know when the appellant converted and was baptised as a Pentecostal Christian. The judge has not explained why, because Mr Feseha and the appellant share - and have discussed - their faith, it follows that Mr Feseha would know the date of the appellant's conversion and baptism. There is no obvious reason why he would know it, given in particular that these events occurred at a time when the appellant and her brother were not

visiting his shop and he was not in any way involved. There is no rational basis for this being a factor that undermines his credibility.

17. Third, the judge found it undermining of Mr Feseha's credibility that he watches YouTube videos rather than attend church. People practice their religion in different ways and the judge has not explained why watching videos, rather than attending church, indicates that Mr Feseha is an untruthful witness.
18. In summary, I find that the judge erred by failing to adequately explain why the evidence of Mr Feseha and Ms Engeda concerning the appellant's use of Amharic (and lack of knowledge of Tigrinya) was rejected. The error is material because the appellant's inability to speak Tigrinya was a central reason why her claim to be Eritrean was rejected and if Mr Feseha and Ms Engeda were telling the truth their evidence would provide strong corroboration for the appellant's explanation of why she does not speak Tigrinya.
19. Given that credibility needs to be considered afresh - and having regard to the extent of further fact-finding that is likely to be necessary - I have decided to remit the appeal to the First-tier Tribunal to be considered afresh with no findings preserved.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 her 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.

Signed

D. Sheridan  
Upper Tribunal Judge Sheridan  
2022

10 January