



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03661/2010
AA/09549/2010

THE IMMIGRATION ACTS

Heard at Field House
On 13th August 2013

Date Sent
On 16th August 2013

.....

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR DAWIT HAILE KASSAY
MS TSELAT KHASSAY
(ANONYMITY ORDER NOT MADE)

Claimant

and

SECRETARY OF STATE

Respondent

Representation:

For the 1st Appellant: Mr C Yeo (Instructed by Polpitiya & Co, Solicitors)
For the 2nd Appellant: Ms L Hirst (instructed by Blavo & Co, Solicitors)
For the Respondent: Ms J Isherwood (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by two Appellants against determinations of the First-tier Tribunal. This is the first time they have been heard

together, they having followed separate courses through the appeals system heretofore.

2. The Appellants arrived together at Heathrow on 14th May 2008 and claimed asylum. They said they were brother and sister from Eritrea and claimed asylum on account of their Pentecostal Christian faith. They claimed to have been persecuted in and deported from Ethiopia in 2005 and persecuted in Eritrea on account of their faith.
3. While the Appellants were still at the airport a third man, who the Appellants acknowledge was their agent, was arrested elsewhere in the building in possession of four passports, two of which were Ethiopian and bore the names and photographs of the Appellants.
4. That man was arrested and prosecuted for offences in relation to assisting unlawful immigration and has been deported.
5. The 1st Appellant who I shall refer to henceforth as Dawit had his asylum claim rejected on 20th August 2008 in which both his age and nationality were disputed. He appealed to the First-tier Tribunal and his appeal was dismissed on 1st June 2010. An Upper Tribunal Judge gave permission to appeal on 23rd June 2010 and a Designated Judge hearing the case set aside the First-tier Tribunal determination on 26th October 2010 and at a resumed hearing the same Designated Judge dismissed the appeal on 12th November 2010. Sedley LJ granted permission to appeal to the Court of Appeal on 3rd August 2011 and a Consent Order was sealed in the Court of Appeal on 7th November 2011 remitting the case to the Upper Tribunal.
6. The 2nd Appellant who I shall refer to henceforth as Tselet, had her asylum claim refused on 8th June 2010. Her date of birth and nationality were also disputed. Her appeal to the First-tier Tribunal was dismissed on 9th February 2010. Permission to appeal to the Upper Tribunal was granted on 28th February 2011 and the First-tier Tribunal determination was set aside on 8th August 2011 with the matter to be reheard by the Upper Tribunal.
7. It was at that stage that it was considered appropriate for the two to be heard together – they were brother and sister and their claims were the same.
8. The Appellants' claims, as originally made, are that they are Eritrean and were living in Ethiopia with their parents. In 1999, while they were visiting an Uncle (Kiros) their parents were taken and deported to Eritrea. Thereafter they lived with and were looked after by Kiros. Kiros' son was involved with the OLF and involved the Appellants in distributing leaflets. In 2005 the authorities came to the house and arrested them all. They were detained for one month during which time Dawit was slapped, kicked and beaten with the butt of a gun. On release they were deported to Eritrea.
9. In Eritrea Dawit was detained and beaten and interrogated about his religion. His release from detention was facilitated by an uncle when he then was reunited with

his sister. The uncle arranged their departure from Eritrea. Tselat's claim is the same although separated during detention.

10. In support of his claim Dawit has provided a report from the Helen Bamber Foundation dated 4th May 2010 and a Psychiatric Report from Dr S Jayalath dated 16th July 2013. Letters from the Eritrea community confirming the Appellants are Eritrean are also provided as are letters from their church.
11. The Appellants' faith is not in issue. It is accepted they are Pentecostal Christians.
12. Both Appellants gave oral evidence on oath before me; Dawit first in the absence of Tselat. Ms Hirst was given the opportunity to take instructions from Tselat after Dawit's evidence and before cross examination. Both Appellant's were cross-examined by their sibling's representative and the Home Office Presenting Officer.
13. In the past both Appellant's claims have been found not credible; however those determinations have been set aside and I am dealing with the case today, although prior evidence remains relevant.
14. The Helen Bamber Foundation report in relation to Dawit, prepared by Dr Fine recounts Dawit's claimed history as told to him. He accepts that as his starting point as is to be expected. He refers to the Appellant's ongoing medical problem with his shoulder (said to result from being hit with a rifle butt) and scars. Dawit has a lot of scars and his shoulder is undoubtedly damaged. Following the Istanbul Protocol, the Dr describes some scars as being "highly consistent" with the claim and others as "consistent". None are diagnostic. Those that are said to be highly consistent could have been caused otherwise only by accidental injury. The Dr notes that the history gives no indication of such accident. It has to be borne in mind however that the Appellant, claiming as he does that his injuries result from torture, is unlikely to offer evidence of , for example a serious road accident.
15. Dr Fine also carried out a mental state examination and found that he met the criteria for a diagnosis of PTSD.
16. The more recent report of DR Jayalathis is similarly based on the history as relayed by Dawit. The DR has looked at his medical records and notes that he has been referred to a mental health clinic and in December 2012 was prescribed Respiridone, an anti-psychotic, when a diagnosis of Schizophrenia was discussed. However the notes indicate that Dawit has received no medication on a regular basis and there do not appear to have been any hospital admissions for mental health issues. Also despite a GP note that Dawit said he felt suicidal, there is no history of attempted suicide or self harm
17. Dr Jayalathis, following his mental state examination concluded that Dawit is likely to suffer from moderate to severe episodes of depression with underlying PTSD. He could however, detect no symptoms of a long standing psychotic illness such Schizophrenia.

18. He suggests that Dawit would benefit from a psychological assessment.
19. Notwithstanding the contents of the two reports, some three years apart, there is no evidence of any meaningful treatment or therapies that Dawit has undertaken for Mental Health issues.
20. While acknowledging the expertise of the Ds, their opinions have to be set against the evidence as a whole and are both based on Dawit being an Eritrean national whose history of persecution has been accepted.
21. There are other factors in this case which I find are fatal to both Appellants' credibility.
22. On arrival in the UK and while they were still at the airport their agent was arrested in possession of what the Appellant's accept are genuine Ethiopian passports bearing their names and photographs. Tselat argued that the passports, while genuine were not genuinely issued and were obtained by the agent for their travel. However the passports were issued, with the Appellants photographs, in 2004. That is four years before they entered the UK. Containing their photographs as they do they cannot possibly have been obtained by the agent for the purpose of escape, being 4 years old by then. According to the Appellants they were yet to be deported from Ethiopia in 2004. They can only therefore have been issued to the Appellants as the passports indicate. It is also too much of a coincidence for their acknowledged agent to be in possession of passports if they were not theirs. Tselat argued that if it was her passport she would have kept it. She could not do so however if her intention was to seek asylum as an Eritrean.
23. As Mr Yeo rightly pointed out the document from the Ethiopian authorities, relied upon by the Secretary of State as verifying Dawit's passport as genuine contained the wrong passport number. That does mean that document cannot be relied upon. However the Appellants accepted the passports are genuine.
24. Furthermore Tselat was interviewed at the airport by an Immigration Officer. A copy of the handwritten transcript of that interview was before me. Tselat told the Immigration Officer her date of birth was 29/03/90 and that her name was Tselat Khassay. She said that she had never had her own passport and had travelled on a forged passport. She said she travelled with her brother. When the fact that her Ethiopian passport had been recovered from the agent was put to her she acknowledged that her real nationality is Ethiopian and she said she had come to the UK for education. At the hearing when this was put to her she said that the Immigration Officer had threatened her with detention if she did not say that. I reject that explanation. The interview took place over 4 years ago and she has never made that allegation before.
25. What is even more damaging is the evidence that Dawit asked his Social Worker to assist him in arranging a voluntary return. To that end there is evidence that a Social Worker took him to Refugee Action. He had his photograph taken and a Laisser Passer was issued by the Ethiopian authorities bearing his picture. That is clear

evidence that at that time he admitted his Ethiopian nationality and was willing to return there. Furthermore his father was contacted in Ethiopia and agreed to look after him.

26. As the Appellants are siblings that evidence not only destroys Dawit's case but Tselat's also. If Dawit is recognised by the Ethiopian authorities as Ethiopian then his sister must also be Ethiopian. That evidence was produced in February 2013 and now the Appellants claim they are not in fact siblings.
27. As to the AVR and Laisser Passer, Dawit denied applying for it and denied ever having had his photograph taken. It is clear from the evidence that he is lying. He did seek voluntary return and then changed his mind, and his story. The Laisser Passer contains his photograph and his Social Worker has no reason to lie. Furthermore Dawit was asked for his consent for Social Services to divulge information from their files to the Secretary of State and he refused to consent. In evidence he confirmed initially that he refused consent, and when pressed as to why claimed to know nothing of the request (it was sent to his solicitors and his Social Worker). I find that he did refuse consent and that he did so because the files would reveal that he had sought voluntary return and was in contact with his family in Ethiopia. The Laisser Passer is clear evidence that the Ethiopian authorities accept his Ethiopian nationality and I find that he is Ethiopian and not Eritrean. His family, including his father is in Ethiopia to whom he can return and he did not come to the UK in need of international protection.
28. With regard to the new claim that the Appellants are not siblings they could not maintain consistent evidence in that regard. Their story hung together if they were siblings but not when they claimed not to be. They maintained that both sets of parents were deported at the same time and in the same circumstances. Dawit said that he and Tselat were not related at all and that she lived with Kiros but he moved around as directed by Kiros. He claimed to know very little about Tselat and at the same time that they were very close. His story was inconsistent and his evidence vague and evasive. When inconsistencies were pointed out he blamed his mental health. However this only affected awkward evidence. Other matters he seemed to be able to recall with remarkable accuracy as evidenced by his interviews and statements.
29. Tselat insisted they were cousins on her paternal side and that after their deportation of their parents they definitely lived together with Uncle Kiros. She said that the agent had told her to say they were brother and sister and so she had but had decided now to tell the truth. Her evidence was inconsistent with that of Dawit and when inconsistencies were out to her she blamed it on having been instructed as to what to say by the agent. She insisted that her parents were Khassy Habtom and Semret Haile and that she is an only child. However Dawit also insisted those were his parents' names and had even produced a copy of a birth certificate. Tselat said that she did not know where the "birth certificate" came from but they were her parents. The clear implication was that she was saying the birth certificate could not be genuine. That document purports to have been issued to Dawit's father in Asmara

in 1997. That cannot be correct as both Appellants claim that their parents were in Ethiopia until 1999. I find I can attach little weight to that document.

30. Both Appellants have said throughout the case that they are siblings. In their screening interviews they said so and gave their parents names. Throughout the entire proceedings their claim has been dependant on their being siblings. I find that they are indeed siblings and that they are lying now in order to protect Tselat's position as a claimed Eritrean.
31. With regard to the claimed involvement with OLF neither Appellant could give consistent evidence as to what they had done and the circumstances of their arrest and who was arrested. I do not believe that either Appellant has ever had any dealings with the OLF; their evidence about that was vague and inconsistent.
32. I do not find either Appellant to be a witness of truth. They are siblings who travelled to the UK using their own genuine Ethiopian passports for economic/educational reasons. They disposed of their passports on entry to the agent to conceal their true nationality and have thereafter pursued a fabricated claim to be Eritreans in fear of persecution. Dawit has clearly sustained significant injuries but I am unable to accept, even to the lower standard that these resulted from torture. The Ethiopian authorities have clearly accepted that Dawit can return there and if he can so can his sister.
33. These Appellants are devoid of credibility and have lied throughout the process. They have not been victims of persecution, they did not live with an uncle but with their parents (with whom Dawit at least is still in contact), who have no doubt funded this whole sorry affair. The Refugee Convention is an international instrument designed to protect the most vulnerable individuals from appalling treatment and the UK has signed up to affording victims of persecution asylum. These Appellants have sought to abuse that system by putting forward a wholly bogus and dishonest claim. It is a great pity that these appeals have been so long in the system and it is to be hoped that this will now be at an end so that they can be removed to rejoin their family in Ethiopia.
34. The Appellants' ages have been an issue in the past but before me it was accepted to be no longer relevant as they are both now accepted to be adults.
35. So far as Article 8 is concerned, the Appellants have been in the UK since 2008; however at all times knowing they had no reason to be here and that they were pursuing a dishonest claim. They can be returned together to their family. Dawit is not on regular medication and can be cared for by his family. They have no family in the UK and any interference with such private life as they have built up in the UK is entirely proportionate, not just for the maintenance of immigration control but for the maintenance of the proper functioning of international policies on Refugees.
36. Neither party sought an anonymity order and as I have determined they are not at risk I make no such order.

37. The appeals to the Upper Tribunal are dismissed on all grounds

Signed

Date 15th August 2013

Upper Tribunal Judge Martin