Upper Tribunal
(Immigration and Asylum Chamber)

TS (interpreters) Eritrea [2019] UKUT 00352 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 May 2019	
Further submissions: 22 May 2019	

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Before

THE HON. MR JUSTICE LANE, PRESIDENT

UPPER TRIBUNAL JUDGE RIMINGTON

Between

TS

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Ms E Fitzsimons, instructed by Sutovic & Hartigan

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

(1) An appellate tribunal will usually be slow to overturn a judge's decision on the basis of alleged errors in, or other problems with, interpretation at the hearing before that judge (Perera v Secretary of State for the Home Department [2004] EWCA Civ 1002). Weight will be given to the judge's own assessment of whether the interpreter and the appellant or witness understood each other.

(2) Such an assessment by the judge should normally be undertaken at the outset of the hearing by the judge (a) putting questions to the appellant/witness and (b) considering the replies. Although he or she may not be able to speak the language of the appellant/witness, an experienced judge will usually be able to detect difficulties; for example, an unexpected or vague reply to a specific question that lies within the area of knowledge of the appellant/witness or a suspiciously terse translation of

what has plainly been a much longer reply given to the interpreter by the appellant/witness. Non-verbal reactions may also be factored into the judge's overall assessment.

(3) Where an issue regarding interpretation arises at the hearing, the matter should be raised with the judge at the hearing so that it can be addressed there and then. Even if the representatives do not do so, the judge should act on his or her own initiative, if satisfied that an issue concerning interpretation needs to be addressed.

(4) In many cases, the issue will be capable of swift resolution, with the judge relying upon the duty of the parties under rule 2(4) of the Procedure Rules of both of the Immigration and Asylum Chambers to help the Tribunal to further the overriding objective of dealing with the case fairly and justly.

(5) A challenge by a representative to the competence of a Tribunal-appointed interpreter must not be made lightly. If made, it is a matter for the judge to address, as an aspect of the judge's overall duty to ensure a fair hearing. Amongst the matters to be considered will be whether the challenge appears to be motivated by a desire to have the hearing aborted, rather than by any genuine material concern over the standard of interpretation.

(6) It will be for the judge to decide whether a challenge to the quality of interpretation necessitates a check being made with a member of the Tribunal's administrative staff who has responsibility for the booking of interpreters. Under the current arrangements for the provision of interpreters, it may be possible for appropriate enquiries to be made by the administrative staff of the Language Shop (a quality assurance service run by the London Borough of Newham in respect of the Ministry of Justice's language contract), as to whether the interpreter is on the register and whether there is any current disclosable issue regarding the interpreter. The initiation of any such enquiries during a hearing is, however, a matter for the judge. In practice, it is unlikely that it would be necessary or appropriate to take such action. In most cases, if the standard of interpretation is such as seriously to raise an issue that needs investigating, the point will probably already have been reached where the hearing will have to be adjourned and re-heard by a different judge (using a different interpreter).

(7) On an appeal against a judge's decision, even if it is established that there was or may have been inadequate interpretation at the hearing before the judge, the appeal will be unlikely to succeed if there is nothing to suggest the outcome was adversely affected by the inadequate interpretation. This will be the position where the judge has made adverse findings regarding the appellant, which do not depend on the oral evidence (Perera , paragraphs 24 and 34).

(8) It is important that Tribunal-appointed interpreters are able to discharge their functions, to the best of their abilities. It is part of the judicial function to enable an interpreter to do this by, for instance, preventing a party or representative from behaving in an intimidating or oppressive way towards the interpreter. By the same token, the Tribunal and the parties are entitled to expect that the interpreter will interpret accurately, regardless of what he or she personally thinks of the evidence they are being required to translate.

DECISION AND REASONS

A. THE ROLE OF INTERPRETERS

1.
Court and Tribunal-appointed interpreters perform a vital role in our justice system. They provide the means of communication between the judge and the other parties and participants in proceedings w here a litigant or witness cannot satisfactorily communicate in the language of the court or tribunal (usually English) . The present case examines what should happen when, during a hearing, questions

arise about the accuracy of the interpretation being provided by the interpreter, whether it be from English to the language of the party or witness ; or from that language to English.

B. THE HEARING

2.
In the present case, the hearing took place before a Judge of the First-tier Tribunal, sitting at Hatton Cross in September 2018. The appellant was challenging the decision of the respondent to refuse her protection claim. That claim involved the appellant being a citizen of Eritrea who said she had a well-founded fear of persecution, if returned to that country, because of her Pentecostal Christianity. She left Eritrea in 2013, staying in Djibouti from then until September 2016, when she embarked on a journey to Europe that eventually led her to the United Kingdom, by way of Switzerland and France.

3.
The judge had this to say about what happened at the hearing:-

“2. The appellant had requested and was provided with an Ahmaric [sic] interpreter for the duration of this appeal hearing. Notwithstanding the provision of a Tribunal approved interpreter, at public expense, the appellant, through her solicitors, expended further public funds (courtesy of the legal ai d fund) by having another interpreter present. Those of us who sit in this Tribunal are well aware that there can sometimes be difficulties and/or even limitations with interpretation and so tend to be alert to spot any such difficulties. There are cases where an appellant wants the services of an interpreter but then tends to respond in English or partly in English and partly in his/her mother tongue. There are those cases where the appellant has no difficulty understanding the interpreted questions in chief but if and when difficult questions are asked in cross-examination, either has, or feigns having difficulty understanding what is being asked. Then there is a case like the instant where counsel alleges that the non-Tribunal interpreter has alleged either that something has been misinterpreted or an answer has not been fully interpreted.

3. Both counsel and the Tribunal Judge find themselves in an invidious position because they cannot act as the referee between two different interpreters. On two separate occasions [c ounsel] asserted that she had “concerns” about the interpretation taking place, not in the sense that she alleged that anything said by the appellant had been misinterpreted or inaccurately interpreted, but on the basis that she feared that not everything said by the appellant might have been full y interpreted. My judicial faculties had not caused me to have the same “concerns”. These concerns mainly arose when [the Presenting Officer] began to cross-examine. In an attempt to allay any such concerns I directed that all questions must be short, concise and put in a simple manner without any complicated or convoluted phrasing or words being used. [The Presenting Officer] wholly co-operated with that direction, although on one or two occasions he dropped his voice and so a question had to be repeated before the interpreter could interpret it.

4. Notwithstanding the foregoing approach [c ounsel] intervened again after a note had been passed to her by the other interpreter. I was not shown that note. [counsel] then made an application that the hearing should in effect, be abandoned and a new appeal hearing should be directed. Although [c ounsel] did not expressly say so, the inference was that any new appeal hearing should take place with a different interpreter. [counsel] put her application explicitly on the basis that she had a concern that a fair hearing could not take place. I asked her questions in an attempt to tease out the precise basis upon which she maintained that that submission could be made out.

5. However, before I decided on that application and whilst I was trying to tease out the precise basis upon which it was put, [c ounsel] made a second application. [counsel] asked me to adjourn notwithstanding that her client was part-way through being cross-examined, so that she could take instructions from her client concerning matters relating to interpretation. She expanded upon that by saying that she wanted a period of time that would permit her (presumably with the assistance of an interpreter) to go through each question asked of the appellant and each answer given by the appellant so that presumably, having taken such instructions, she could then assert to me that this, that or the other had not been interpreted completely and/or accurately.

6. I rejected her (second) application for the following reasons:

(i) The intervention came at a point where the appellant was part-way through cross-examination. It is a strict rule of procedure in our Courts and Tribunals that witnesses are not spoken to about their evidence, by anybody whomsoever, whilst in the course of giving evidence.

(ii) It is wholly inappropriate for a Tribunal judge to enter into some kind of refereeing situation to ch o ose between the official Tribunal interpreter and some other interpreter who has passed a note to counsel (not seen by the judge) which, seemingly, acted as the catalyst for the request that counsel should be able to go through each and every question and answer with her client. Presumably, it was intended that counsel would then return to the hearing and make assertions to me, notwithstanding that I would be in no position to know whether they were well-founded or ill founded.

(iii) The request and intervention came at a stage in the cross-examination where the appellant was being asked questions which were only marginally relevant to the main issues in the appeal. To be more specific, it arose at a stage where the appellant appeared to be giving equivocal evidence as to whether she had made a particular journey from Switzerland to France alone or in the company of other people, and, if so, what people. This appeal was certainly not going to turn upon that issue.

(iv) As always I was mindful of the difficulties that can arise in cases where interpreters are involved and considered that on the principal factual issues upon which the appellant was being questioned, the thrust of her evidence, by the answers that she was giving, was being properly put across. I appreciate that, to a limited extent, this means that the judge has to take a view about the interpretation that is taking place, but that is something which a judge in this jurisdiction has to do week in and week out. It is part of the essential judge-craft in this jurisdiction. “

4.
At paragraph 8, the judge said that the time came when he :

“formed the view that there was a whiff of tactics to this manoeuvring in that whatever I said concerning interpretation, [c ounsel’s] response, on several occasions, was “let me make a note of that ” . Those comments simply reinforced my view that there was a whiff of manoeuvring going on to try and lay the ground for an appeal in the event of this appeal being unsuccessful”.

5.
At paragraph 9, the judge provided additional reasons for his decision not to adjourn; namely , that any deficiency in interpretation had not, in his view, caused the thrust of the appellant’s case to be misunderstood; that any lengthy or complicated question had been required to be split into simple component parts; that the judge had clarified any apparently equivocal answer by the appellant, via the interpreter; and that the concerns expressed to the judge about interpretation were “vague and non-specific” in nature.

6.
The judge's decision then turned to an analysis of the appellant's credibility. The judge found this to be wanting. In large part, the judge's adverse credibility findings were based upon inconsistencies within and between her various written witness statements and interview record; and on assertions therein which the judge regarded as nonsensical or contrary to the experience of the Tribunal.

7.
At paragraph 43 (ii), however, it is apparent that the judge rejected aspects of the appellant's oral evidence at the hearing, such as that she was given €300 by the father of her child , which she claimed had she paid to an agent:-

"It would have been totally obvious to somebody with the appellant's guile, who had sojourned in Switzerland for about four years, that there was no need whatsoever for her to pay a third party to assist her to purchase a train ticket to travel to France. I am in no doubt whatsoever that she would not have wasted €300 by paying it to a third party."

8.
At paragraph 43(iii), the judge concluded that –

"Notwithstanding that the respondent accepted the assertion that the appellant is a Pentecostal Christian, I do not accept her evidence that she intends to wear that religion upon her sleeve and/or to proselytise about it wherever she might find herself."

9.
The judge regarded that assertion as "self-serving evidence of the type only to be expected from somebody who claims that the outcome of h er asylum claim depends, at least to a significant extent, upon that evidence".

10.
Overall, the judge concluded, at paragraph 43(iv) , that the "The appellant's credibility and reliability as a witness is so compromised that I am unable to place any weight upon it, save to the extent that it is corroborated by reliable testimony". The judge then explained why the supporting evidence from witnesses who attended the hearing did not materially assist the appellant. He accordingly dismissed her appeal.

11.
C ounsel who had appeared for the appellant before the judge submitted written grounds of appeal to the Upper Tribunal. Ground 1 asserted that there had been procedural unfairness as a result of refusing to adjourn the appeal hearing. Reliance was placed upon the decision of McCloskey J in Nwaigwe (Adjournment: fairness) [2014] UKUT 00418 (IAC) where, at paragraph 5 , it was said:-

" 5 . As a general rule, good reason would have to be demonstrated in order to secure an adjournment. There are strong practical and case management reasons for this, particularly in the contemporary litigation culture with its emphasis on efficiency and expedition. However, these considerations, unquestionably important though they are, must be t e mpered and applied with the recognition that a fundamental common law right, namely the right of every litigant to a fair hearing, is engaged. In any case where a question of possible adjournment arises, this is the dominant consideration."

12.

Ground 1 pointed to counsel ’s note of the hearing, which made it evident that, at the conclusion of cross-examination of the appellant, counsel had been allowed to confer with the appellant and the Amharic-speaking interpreter provided by her instructing solicitor in order to attend the hearing and assist counsel with interpretation . Following that conference, ground 1 asserted that the appellant’s counsel had not put “vague and non-specific concerns” to the judge about the interpretation. Furthermore, the judge had failed to take into account the fact that the appellant herself had said at the hearing that her answers to the Presenting Officer’s questions were not being accurately interpreted. Ground 1 said t he judge “fails to address this at all in his decision . He proceeds on the simple basis that it was only on the basis of the A’s interpreter and the A’s legal representative’s concerns”.

13.
Ground 1 also submitted that the judge had taken irrelevant factors into account in deciding the adjournment applications; namely, that the consequence of abandoning the hearing would be wasted costs, public expense and a burden for the Tribunal system; that some of the “problem” might have arisen from the fact that the appellant spoke Tigrinyan; and that the judge had also stated to counsel during the hearing, when interpretation issues were raised , that “this is not good for your case as your client is meant to understand Amharic”.

14.
Ground 2 concern ed an alleged failure by the judge to take into account relevant post-hearing evidence. This was a witness statement, from the appellant’s counsel , which was attached to the grounds of appeal that had also been sent to the First-tier Tribunal on 26 September 2016, for the urgent attention of the judge concerned, three working days after the hearing on 21 September. The judge’s decision was not promulgated until 2 October 2018.

15.
C ounsel ’s witness statement contains the following:-

“ …

2. At the hearing, the proceedings were interpreted to the Appellant by the Amharic-speaking court interpreter.

3. My instructing solicitors ha d instructed their own interpreter, Mr Beyene, to attend the hearing, to sit at the back of the court, take note of the proceedings, and check that the interpreting was accurate.

4. During the appellant’s evidence, Mr Beyene passed me a note which stated that the appellant and the court interpreter were not correctly understanding each other.

5. I took instructions from my client at the conclusion of her evidence to the same effect.

6. I applied for an adjournment of the proceedings, in summary, on the basis that the interpreting was inaccurate and the evidence could not be relied upon. The hearing would be unfair.

7. This application was refused by the judge. The hearing therefore proceeded.

8. After the hearing had concluded, I left the court building and waited at the bus stop which is on Faggs Road, located immediately on the left, after coming up from Dukes Green Avenue. I was waiting there for approximately 5-10 minutes for a bus to Hatton Cross tube station.

9. When I arrived at the bus stop, I noticed that the court interpreter from the hearing was at the bus stop. I did not initiate any conversation with her.

10. A few minutes after arriving at the bus stop, the court interpreter approached me in a confron tational or an aggressive manner, and informed me of the following:

(i) My client had been lying because she had interpreted everything accurately during the hearing;

(ii) Eritrea is safe and there is no danger there. The war is over, the borders are open and people are celebrating. My client faces no danger there at all;

(iii) she feels sorry for the judge who has to deal with these types of cases.

11. I did not respond, save for, at first, to remind her that I had not accused her personally of not accurately interpreting, but I was acting on my client's instructions.

12. I was extremely concerned that this behaviour as it clearly puts into question the independence of the court-appointed interpreter and, on any view, displays a lack of impartiality.

13. I would ask that this information be brought to the attention of [the judge] before a decision in respect of my client's appeal is made, as, in my view, it directly impacts upon the fairness of the proceedings."

16.
Ground 3 contended that the judge had made "multiple errors" in respect of the appellant's evidence including that "nowhere in her evidence [did she say] she paid €300 to an agent to travel from Switzerland to France". Rather, the appellant's account was that the money was paid to make the journey from France to the United Kingdom, which required the services of an agent.

17.
Ground 4 complained that the judge had failed to give the appellant fair notice that he was going behind the concession made by the respondent, concerning her Pentecostal Christianity. There had been no suggestion that the respondent considered that the appellant would not wish to prosely ti se.

18.
Ground 5 submitted that the judge had failed to follow the vulnerable witness guidance, whilst ground 6 submitted that he had failed to take into account or place relevant weight on the appellant's answers in respect of her knowledge of Eritrea, at her asylum interview.

C. GUIDANCE AND CASELAW ON INTERPRETERS

(a) Chief Adjudicator's Guidance Note No. 3 (May 2002)

19.
In May 2002, the Chief Adjudicator, HHJ Henry Hodge OBE (as he then was) issued an A djudicator G uidance N ote No. 3, concerning interpreters at immigration appeal hearings. The G uidance N ote had since been withdrawn. It nevertheless contains the following passage which we take to be uncontroversial:-

"No. 6 There is no objection to appellant's representatives (sic) bringing in their own interpreter. Interpreting is a difficult job particularly when being done under pressure. An appellant's interpreter however must only communicate through the appellant's representatives. If there is any disagreement with the court interpreter the appellant's interpreter can bring that to the representative's attention

promptly. It may be appropriate to have the appellant's interpreter sit relatively close to the appellant's representative."

(b) Perera v Secretary of State for the Home Department

20.
In Perera v Secretary of State for the Home Department [2004] EWCA Civ 1002, the Court of Appeal was concerned with a challenge to the decision of an A djudicator in which it was alleged that the Tribunal-appointed interpreter had committed errors of interpretation. In fact, a challenge to the use of the interpreter had been made by the appellant's solicitor (who spoke Sinhalese) even before the hearing commenced. The solicitor had encountered the interpreter in connection with another appeal, where the solicitor considered the interpretation provided to another a djudicator had been wrong.

21.
The present a djudicator was unmoved by this submission and the hearing commenced, using the interpreter. The solicitor subsequently made a statement in which he said that the interpreter was unable to interpret many of the questions put to the appellant and the witness from English to Sinhalese and vice versa. The solicitor had intervened to point out that the interpreter was wrong; but the a djudicator "seemed to be quite irritated at my interventions".

22.
The a djudicator's contemporaneous note recorded the intervention of the appellant's solicitor. From her notes, it could be seen that the adjudicator had stated at the hearing that it was always difficult for an interpreter, when there was someone else present with relevant language knowledge. As far as the a djudicator could tell, the appellant and the interpreter had been understanding each other. However, if there were to be a problem after lunch the adjudicator said that the appellant's solicitor was to identify it with the interpreter manager in the hearing room "so we can understand the problem".

23.
In her determination, the a djudicator s aid as follows:-

"28. Before the appeal commenced on 21 November 2002 the appellant's representative requested that the retained Sinhalese interpreter be changed as he claimed that this interpreter had been involved in another matter where the interpreter and the representative's client had not understood each other. I noted the appellant's representative had made adverse comments about another interpreter in the language of Sinhalese used at the appellant's interview.

29. In the event, when the appellant and his brother came before me to give evidence, I was satisfied that the interpreter and each of the witnesses understood each other. There was the occasional interruption by the appellant's representative to identify the interpreter had not interpreted him correctly, particularly during cross-examination. During a break in proceedings I checked with the manager of the Interpreters' Section who confirmed the interpreter was often retained by IAA to interpret in the language of Sinhalese and there were no adverse comments on her record. When proceedings recommenced I requested the appellant's representative, if he had any further comments to make about the interpreter, then the manager for the Interpreters' Section should be present so that the appellant's representative could identify exactly what the problem was with this Sinhalese interpreter. In the event, no further comment was made and the matter was not referred to by the appellant's representative in his final submissions.

30. Both the appellant and his brother confirmed as true and correct the contents of their respective statements adduced in evidence.

31. Each of the witnesses was then examined orally before me. My Record of Proceedings, now forming part of the appeal file, sets out details of oral evidence, both as to questions asked and answers given.

32. At the end of oral examination, at the second part of the hearing, each of the representatives gave me their final submissions, each referring to all the salient points. Details of those submissions are, again, set out in my Record of Proceedings which now forms part of the appeal file."

24.
Before the Court of Appeal, counsel for the appellant (whose appeal had been dismissed by the a djudicator) submitted that further enquiry should have been made by the a djudicator, in the presence of the parties, as to the competence and qualifications of the interpreter. Counsel referred to what was described as the “Guide to A djudicators” of May 2002. This appears to be a different document from the G uidance N ote N o. 3, to which we have already referred. The “Guide to a djudicators” apparently said that where an interpreter is challenged “the ability and skill level of the interpreter present should be quickly verified [by the a djudicator] by speaking to the Interpreter Team Leader”.

25.
Counsel submitted that it had been insufficient for the a djudicator to raise the question with the manager, during lunch, as to whether the interpreter had any adverse comments recorded against her. Overall, the a djudicator’s reaction to the issues raised by the appellant’s solicitor during the hearing had been inadequate and the standard of interpretation was not so as to enable the witnesses to present their e vidence in persuasive fashion and to enable the a djudicator properly to assess it.

26.
Pill LJ gave the leading judgment. He rejected the appellant’s complaints about interpretation:-

“24. Before expressing my conclusion upon the complaint about interpretation, I consider the context in which the Adjudicator's findings of fact and conclusions were made. The Adjudicator's findings adverse to the Appellant were based on a number of factors. I have summarised these in paragraphs 4 to 6 of this judgment. The Adjudicator relied on inconsistencies in accounts given in the statement of evidence form (SEF), at interview and in a written statement as to the alleged raid on the house in December 2001, which Mr Grodzinski not unfairly describes as the core event. The inconsistencies set out at paragraphs 45 to 47 of the determination do not depend on the oral evidence given at the hearing before the Adjudicator. The finding in relation to whether the JVP were violent does not depend on evidence given at that hearing but on an answer when interviewed on 13 June 2002. While a fairly detailed written complaint was made by the solicitor about the quality of interpretation, by a different interpreter, on that occasion, no complaint was made in relation to the statement that the JVP never used violence. It has not been suggested on behalf of the Appellant how these inconsistencies are to be explained, and the Adjudicator was entitled to have regard to them.

25. Mr Jones stresses that this was a case in which, because of the other major difficulties faced by the Appellant, it was necessary to give his oral evidence at the hearing the most careful consideration and there was a risk, it is submitted, that the quality of the interpretation may have made that impossible. If one point was misunderstood as a result of poor interpretation, it cannot be known what the Adjudicator's conclusion would have been but for that error. I bear in mind the importance of looking at "all the evidence in the round", as submitted by Mr Jones. The Adjudicator claimed to rely

on the oral evidence. In relation to what the Adjudicator described as "a very blatant inconsistency between the two brothers' accounts" of the raid in December 2001, the Adjudicator is claimed to have taken account of only part of the Adjudicator's report in the brother's case when other parts would have assisted the Appellant.

26. In my judgment, the Appellant has not been prejudiced in this case as a result of the need to interpret between English and Sinhalese and the way it was done. I attach importance to the Adjudicator's own assessment, expressed in her contemporaneous note and in her determination, that the interpreter and witnesses understood each other. For the reasons given, adverse consequences do not flow from the Adjudicator recording, at one point in her note, that UNP were in power at a time when they were not in power. Even if there was a misunderstanding on one point, it does not affect the Adjudicator's findings on other points or create a real possibility that, but for that point, conclusions might have been different. Cogent reasons were given which did not relate to the oral evidence at the hearing. In finding the inconsistency between the two brothers' accounts, it is the written statements of the brothers, both of which were submitted to her, that the Adjudicator appears to have relied on.

27. I am not persuaded that the interpretation at the hearing was other than of an adequate standard. Moreover, the Adjudicator having made an enquiry with the appropriate manager, the solicitor was given an opportunity to pursue with the manager any concern he had.

28. While I acknowledge that a concerned solicitor may be in a difficult position, the complaint has, in the context of this case, a lack of substance, especially in the absence of further action by him. The one complaint about which particulars are given has been analysed with the help of the note now available. There are no particulars of other specific failures of the interpreter, either in statements or by way of contemporaneous note, to give substance to the general complaint made. I add that I am very doubtful whether further action by the solicitor would have revealed a state of affairs which required further action by the Adjudicator.

29. I also consider the complaint in the context of the evidence and findings in the case, which I have summarised. The Appellant had a fair hearing, in my judgment. I see no risk that the Adjudicator did not have the opportunity properly to assess the evidence of the witnesses or that her findings can be impugned by reason of any fault in interpretation or procedure. ”

27.
Judge LJ added the following remarks:-

“32. It is well-understood that if the litigant cannot speak or comprehend the language in use at the proceedings in which he is involved, he needs an interpreter. His physical presence at the hearing is not enough. It may however be worth adding that the court's responsibility to do justice cannot be performed if an interpreter is not available when one is needed, or when the interpreter who is available is not of adequate competence. The court, no less than the litigant disadvantaged in the use of English, needs an interpreter.

33. Interpreters perform their duties to the best of their skill and understanding. There are bound to be occasions when the translation of words from one language into another may be less than exact, and ideas, and concepts, expressed in one language, cannot always pass from and into another language without some change, perhaps simply of emphasis.

34. When a responsible legal representative expresses some dissatisfaction about the quality of the interpretation and the skills of the interpreter, that plainly gives rise to a concern which the court, or in this instance the Adjudicator, should immediately address. That is what this Adjudicator did. The responsibility for deciding whether or not the proceedings should continue with the existing interpreter, or whether the interpreter should be discharged and the proceedings restarted, falls not on the legal representatives, but on the Adjudicator. For the reasons given by Pill LJ, I agree that no sufficient basis for impugning the quality of the interpretation in the present proceedings has been shown, and there is nothing which suggests that the outcome of the proceedings from the appellant's point of view was adversely affected by inadequate or unskilled interpretation."

28.
Neuberger LJ agreed with both judgments.

(c) SJ (Hearing Interpreters") Iran

29.
In SJ ("Hearing Interpreters") Iran [2004] UKIAT 00131, the Immigration Appeal Tribunal allowed an appeal on the following basis:-

"3. The grounds of appeal are extensive. In fact they really are too long but they do raise a point of central concern. They complain about the conduct of the interpreter. It is quite plain that the interpreter's competence was challenged during the hearing by a person instructed by the appellant. It is also plain that the Adjudicator went to considerable efforts to maintain order in his hearing room and protect the interpreter from being criticised in an intimidating and unfair way.

4. We have evidence presented in a proper form from counsel at the hearing and the interpreter who was instructed by the appellant to check on the quality of the interpreter provided by the Appellate Authority. It is clear from reading these statements that the interpreter responded to criticism by lowering her voice so that her interpretation could not be heard. Whilst we have a great deal of sympathy for the interpreter taking this course it was wrong. Hearings in the Appellate Authority are almost always conducted in public and that means they have to be conducted in a way that members of the public and people with a particular interest in the case can understand what is happening. By permitting the interpreter to interpret too quietly for other people to hear the Adjudicator erred.

5. Justice must be seen to be done and the only way this can be remedied is for the appeal to be heard again by a different Adjudicator. "

(d) **Asylum and Immigration Tribunal Bench Book (2005)**

30.
In 2005, Hodge J (as he had become) issued a Bench Book for the then newly created Asylum and Immigration Tribunal. Paragraph 8.12 of the Bench Book had this to say on the subject of interpreter difficulties:-

" 8.12 The interpreter will inform the judge of any difficulties that he is encountering. Sometimes, the appellant's own interpreter, who has come to the hearing, will tell the appellant's representative that the court interpreter is not doing a good job. The judge will need to find out exactly what these alleged deficiencies are, and ask the court interpreter if he is aware of any problem. He should record any alternative renditions of a word or phrase given by the court interpreter and the appellant's interpreter. The witness will, of course, also have a view on this. If the difficulty is due to the interpreter and appellant not speaking the same dialect, then of course it will not be possible to

continue hearing the oral evidence, and unless another interpreter is available, the case will have to be adjourned. O n the other hand, the judge will be reluctant to abort the proceedings where the court interpreter insists that there is no problem, and the alleged difficulties see m to be a delaying tactic.

8.13. More often, the interpreter will have difficulty because the questions put to the witness are too long and complicated, or because the witness is replying too rapidly and volubly. The judge should ask that the questions be simplified or broken do w n into manageable chunks, and that the witness slow down and give the interpreter time to translate the answers sentence by sentence. If there are still unduly protracted exchanges between witness and interpreter, the judge should inquire into the reason. It may be that the interpreter is trying to obtain clarification from the witness in order to give a sensible translation. But if the witness's answers do no t seem to make sense, the interpreter should still translate them as they are. It is up to the representatives (or the judge) to pursue areas of doubt emerging from the answers."

D. CURRENT ARRANGEMENTS FOR INTERPRETERS IN COURTS AND TRIBUNALS ETC

31.
Ms Fitzsimons has provided a considerable amount of helpful information on the subject of interpreters. This has been supplemented by Mr Lindsay. Both make reference to what is said about interpreters in the Best Practice Guide to Asylum and Human Rights Appeals (Henderson, Moffatt and Pickup) which is to be found at https://www.ein.org.uk/bpg/chapter/34#toc2 .

32.
A National Register of Public Service Interpreters (NRPSI) was established in 1994, administered by the Institute of Linguists, with the support of the Home Office and the Ministry of Justice (as it now is). The Best Practice Guide says:-

"It is often, not unnaturally, assumed by appellants and representatives - and perhaps by some judges – that only NRPSI interpreters are used for court work by the T ribunal. This is not the case. The Tribunal a dministration has made efforts to improve the quality of interpreters in recent years, but it remains the position that Tribunal interpreters do not need to have relevant qualifications or be members of the NRPSI."

33.
From 31 October 2016, i nterpret ation s ervices for all courts, tribunals and prisons have been supplied under contract with thebigword Group Ltd and Clarion UK Ltd. The bigword Group Ltd provides face to face, telephone and video remote interpreting services for spoken languages, whilst Clarion UK Ltd provides sign language services.

34.
The qualifications and experience required of interpreters vary depending on the category of the booking and the language service in question required. The Ministry of Justice Guide to Language and Translation Services in Courts and Tribunals differentiates between "complex written", "complex other" and "standard" services. There is also differentiation between languages: "standard languages" (41); "special services" (7 non-spoken languages); and "languages permitted exceptional qualifications requirements"; that is to say, languages without DPSI. There are 152 such languages, which fall outside the standard languages category. The acronym DPSI refers to the "Diploma in Public Services Interpreting". The upshot is that where a language falls under the "exceptional

qualification requirements", interpreters are not required to have a DPSI. This appears to be on the basis that such languages are less frequently spoken.

35.
The Language Shop (London Borough of Newham) runs a quality assurance service in respect of the Ministry of Justice's language contract. The workings of this are described in a document entitled a " g uide to q uality a ssurance of the M O J L anguage s ervices c ontract", which "is intended to raise standards and keep them high, resulting in a more reliable, accurate safe provision". The L anguage Shop guide provides for a complaint s procedure, that can be made to the supplier directly or to the Language Shop, but not to both. The Language Shop holds a register of linguists o n behalf of the M O J. Only those linguists whose details are included on this register are permitted to work on MoJ bookings made under the language services framework . If a linguist fails any part of the quality assessment they must be suspended or removed from the register. Assessments are carried out via so-called "mystery shopping" assessments, spot check assessments and in - person assessments.

36.
Amharic is one of the "languages permitted exceptional qualifications requirements (languages without DPS I) ". The qualifications for a standard booking in respect of an interpreter in such a language are set out at A nnex E to the MoJ Guide .

E. LEGAL AID FOR INTERPRETERS TO ASSIST APPELLANTS' REPRESENTATIVES

37.
Ms Fitzsimons has also provided information regarding the qualifications of interpreters who are funded by the Legal Aid Agency in order to assist an appellant's representative. The result of Ms Fitzsimons' investigations is that there appear to have been no specific requirements regarding interpreters in this regard before September 2018. In relation to matters opened in or after September 2018 , however, the Standard Civil Contract Specification makes provision about the qualifications of interpreters. Paragraph 2.48 of the Specification states that the representative may not instruct an individual to provide interpretation services in connection with c ontract w ork unless the individual holds at least one of a number of specified qualifications. These include " B asic I nterpreting Q ualification", C ommunity I nterpreting L evels 2, 3 and 4 and the UK Border Agency Certificate.

38.
Paragraph 2.50 provides that this requirement may not apply in "exceptional circumstances", which include where there would otherwise be undue delay and/or increased costs; where the client requests an interpreter of a specific gender and such a request cannot reasonably be accommodated otherwise than by the use of a non-qualified interpreter; and where there is a rare language or dialect which cannot reasonably be accommodated otherwise than by the use of a non-qualified interpreter.

39.
In such cases, the representative "must be satisfied that the interpreter has a suitable level of expertise and prepare a file note setting out the justification".

40.
In the present case (which was opened before September 2018) the appellant's solicitors engaged Mr Beyene, through an agency. The agency stated that Mr Beyene had worked for them for twelve years and had twenty years' experience as an interpreter.

F. GENERAL PRINCIPLES

41.
There is no reason of which we are aware to regard the current contractual arrangements for the provision of interpreters at tribunal hearings as providing anything other than an appropriate set of quality controls , designed to ensure that appellants and witnesses who require an interpreter to give their evidence can do so (and be questioned about it) in a way that satisfies the requirements of justice. In particular, t he rational e for permitting “exceptional qualifications requirements” instead of a DPSI is cogent. The role played by the Language Shop is plainly important, both as regards its general checks on registered interpreters and also in dealing with specific complaints about an interpreter. In short , the present system provid es a satisfactory level of confidence that, as a general matter, interpreters who are engaged by the Immigration and Asylum Chambers to translate at hearings are adequately qualified to undertake that task.

42.
Although it is impossible to provide authoritative answers to the range of questions concerning issues with interpreters that may nevertheless arise from time to time at hearings it is, nevertheless, possible to set out the following general principles.

43.
As the judgments in Perera show, an appellate tribunal will usually be slow to overturn a judge’s decision on the basis of alleged errors in, or other problems with, interpretation at the hearing before that judge. Weight will be given to the judge’s own assessment of whether the interpreter and the appellant or witness understood each other (Perera , paragraph 26).

44.
Such an assessment by the judge should normally be undertaken at the outset of the hearing by the judge (a) putting questions to the appellant/witness and (b) considering the replies. Although he or she may not be able to speak the language of the appellant/witness , an experienced judge will usually be able to detect difficulties; for example, an unexpected or vague reply to a specific question that lies within the area of knowledge of the appellant/witness (such as asking the person concerned as to how and by what route they travelled to the hearing centre); or a suspiciously terse translation of what has plainly been a much longer reply given to the interpreter by the appellant/witness. Non-verbal reactions may also be factored into the judge’s overall assessment. It is difficult to be any more specific; we are, here, very much in the realm of judge craft.

45.
Where an issue regarding interpretation arises at the hearing, including the situation where an interpreter appointed by the appellant’s representatives , and present at that hearing , considers the Tribunal-appointed interpreter has inadequately translated a question or answer, the matter should be raised with the judge at the hearing so that it can be addressed there and then. Even if the representatives do not do so, the judge should act on his or her own initiative , if satisfied that an issue concerning interpretation needs to be addressed.

46.
In many cases, the issue will be capable of swift resolution, with the judge relying upon the duty of the parties under r ule 2(4) of the Procedure Rules o f both of the Immigration and Asylum Chambers to help the Tribunal to further the overriding objective of dealing with the case fairly and justly. For instance, it may be that clarification of a particular word or phrase, which is thought to be causing difficulties, will enable matters to p roceed smoothly. In some cases, as Hodge J envisaged, breaking

questions up into short component parts will be sufficient (as the judge attempted to do in the present case).

47.
A challenge by a representative to the competence of a Tribunal-appointed interpreter must not be made li ghtly . If made, it is a matter for the judge to address, as an aspect of the judge's overall duty to ensure a fair hearing. Amongst the matters to be considered will be whether the challenge appears to be motivated by a desire to have the hearing aborted, rather than by any genuine material concern over the standard of interpretation .

48.
It will be for the judge to decide whether a challenge to the quality of interpretation necessitates a check being made with a member of the Tribunal's a dministrative staff who has responsibility for the booking of interpreters. The submission to that effect, recorded in paragraph 17 of Perera , was based on the now - withdrawn G uidance N ote of 2002.

49.
Under the current arrangements, it may be possible for appropriate enquiries to be made by the a dministrative staff of the Language Shop as to whether the interpreter is on the register and whether there is any current disclosable issue regarding the interpreter. The initiation of any such enquiries during a hearing is, however, a matter for the judge. In practice , it is unlikely that it would be necessary or appropriate to take such action. In most cases, if the standard of interpretation is such as seriously to raise an issue that needs investigating, the point will probably already have been reached where the hearing will have to be adjourned and re - heard by a different judge (using a different interpreter).

50.
On an appeal against a judge's decision, even if it is established that there was or may have been inadequate interpretation at the hearing before the judge, the appeal will be unlikely to succeed if there is nothing to suggest the outcome was adversely affected by inadequate interpretation. This will be the position where the judge has made adverse findings regarding the appellant, which do not depend on the oral evidence (Perera , paragraphs 24 and 34).

51.
It is important that Tribunal-appointed interpreters are able to discharge their functions, to the best of their abilities. It is part of the judicial function to enable an interpreter to do this by, for instance, preventing a party or representative from behaving in an intimidating or oppressive way towards the interpreter. By the same token, the Tribunal and the parties are entitled to expect that the interpreter will interpret accurately, regardless of what he or she personally thinks of the evidence they are being required to translate.

G. DISCUSSION

52.
With these principles in mind, we return to the specifics of the appellant's case. It will be evident from what we have said that there is a good deal in the judge's decision that is indicative of what we regard as best practice. The judge, who is experienced in these cases, formed the view that any deficiencies in interpretation which may have taken place were not such as to have " caused the thrust of the appellant's case to be misunderstood, altered or inadequately expressed" (paragraph 9(i)).

53.
On the other hand, it is clear from what the judge said in paragraph 2 of his decision that he regarded the presence of the interpreter instructed by the appellant's representatives as generally problematic and, in particular, as an unnecessary expenditure of public funds. That view appears to have coloured the judge's attitude towards the concerns which counsel for the appellant expressed, on the basis of what she was being told by the appellant's interpreter about the way that the Tribunal-appointed interpreter was translating the oral evidence .

54.
We also accept that the judge failed to have regard to the fact that the concerns regarding interpretation were not, in fact, emanating solely from the appellant's interpreter but that the appellant herself, who understood some English, had said to the judge that her answers were not being accurately interpreted. Whilst, as we have explained, an appellate tribunal will generally be slow to interfere with a judge's conclusion that issues regarding interpretation had no material effect on the overall thrust of the evidence, the judge does need to deal with the nature of the complaints being made. He re , it was material that the complaints were coming from two different sources (namely, the appellant and the interpreter engaged by the solicitors) .

55.
The appellant's grounds of application assert that the judge was wrong to refuse the adjournment application by reference to the fact that the abandonment of the hearing would cause wasted costs, public expense and a burden for the Tribunal system. As we have seen, t he grounds also complained that the judge indicated that some of the "problem" encountered by the appellant with the interpreter might have arisen from the fact that the appellant speaks Tigrinya n and that the judge said during the hearing that "this is not good for your case as your client is meant to understand Amharic".

56.
It does not appear that the judge was given an opportunity to comment upon what counsel said in the grounds about his alleged comments on this matter. We therefore place only limited weight on this aspect of the grounds, notwithstanding that the exchanges were said to be recorded in counsel 's note of the hearing.

57.
However, in view of the fact that the judge concluded that the appellant was not a credible witness and had failed to prove that she was a citizen of Eritrea, the complaints being made at the hearing about the quality of the translation to and from Amharic assume greater prominence. We agree with the appellant's grounds, to the effect that the judge's primary task at this point was to determine whether there were genuine difficulties with the Amharic-speaking interpreter , rather than considering whether the appellant spoke other languages than the one in which she was seeking to give her evidence.

58.
In large part, the adverse credibility findings of the judge were based on inconsistencies and other deficiencies that he detected in the written evidence, as opposed to the oral evidence given at the hearing. As we have said above, by reference to the judgments in Perera , an appellate tribunal is likely to be unpersuaded to disturb a judicial decision because of problems of oral interpretation at the hearing, where the reasoning of the judge does not materially depend upon the oral evidence.

59.

In the present case, the grounds take issue with the app arent finding of the judge at paragraph 43(ii) of the decision that the appellant had “a proclivity to lie and practise deception” , on the basis that the judge did not accept the appellant had paid €300 to an agent to take her from Switzerland to France.

60.
Reading paragraph 43(ii), it is by no means apparent that this was a finding that the judge did, in fact, make. It is possible to read his findings as involving the appellant (a) employing the services of an agent to take the appellant from Switzerland to France , and (b) paying an agent €300 to take the appellant to the United Kingdom.

61.
Overall, so far as concerns the challenge in ground 1 on the basis of the judge’s refusal to adjourn in the light of the alleged problems regarding interpretation at the hearing, we find the matter to be finely balanced. Without ground 2, we would be minded to conclude that, in all the circumstances, the judge did not create procedural unfairness by refusing to adjourn.

62.
Ground 2, however, put s things in a very different light. Despite what we have just said, it was apparent that both the appellant’s interpreter and the appellant herself were having difficulties with the Tribunal-appointed interpreter’s translations. As we have said earlier, each of the participants at a hearing need s to have confidence that the interpreter is faithfully attempting to translate to the best of his or her ability and that the performance of the interpreter is not influenced by any animosity towards the appellant or witness with whom they are conversing at the hearing. An interpreter, like any other participant in the hearing, is entitled to have their own views about the appellant or a witness. But , just as with the other professional participants at th at hearing, the interpreter needs to maintain a firm demarcation between his or her views and the job in hand.

63.
It is on this basis that we must examine counsel ’s statement about events at the bus stop, following the hearing. There is no reason to doubt the contents of the statement, made only some 72 hours after the events in question. Mr Lindsay did not attempt to suggest otherwise.

64.
The uninvited comments of the interpreter to counsel raise very gr ave doubts as to the interpreter’s independence and impartiality. Th at in turn raises serious questions as to whether the interpreter was doing her best to translate what the appellant was saying to the judge. Seen in this light, the complaints of the appellant’s interpreter and of the appellant herself at the hearing assume significant force.

65.
Re grettably , it does not appear that counsel ’s statement of 24 September ever found its way to the judge. Had it done so, we have little doubt that the judge would have decided not to issue a decision in the appeal but, instead, would have adjourn ed the proceedings for an entirely fresh hearing. In the circumstances, that is clearly what justice demand ed . Since it did not happen, we must repair th at deficiency.

66.
For this reason, we do not consider it necessary to address those grounds which take issue with the credibility findings of the judge in relation to the witness statements and other non-oral evidence.

H. DECISION

The decision of the First-tier Tribunal contains an error of law. We set the decision aside and remit the matter to the First-tier Tribunal, to be heard de novo by a different judge and interpreter (details of which are contained on the Tribunal file).

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 dir ectly or indirectly identify her or any member of their 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 Date

30 August 2019

The Hon. Mr Justice Lane

President of the Upper Tribunal

Immigration and Asylum