



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

Appeal Number: AA/05660/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 26 February 2015  
Prepared 26 February 2015**

**Decision & Reasons Promulgated  
On 25 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

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

Appellant

**and**

**MRS FREWEINI NEGASH  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Mills, Senior Presenting Officer

For the Respondent: Mr J Howard, Counsel, instructed by Fountain Solicitors

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The claimant, a national of Eritrea, date of birth 3 March 1992, appealed against the Respondent's decision, dated 28 July 2014, to make removal directions under Section 10 of the Immigration and Asylum Act 1999, an asylum and human rights based claim having failed, and an IS151A having been issued on 14 June 2014.

3. The appeal against that decision came before First-tier Tribunal Judge Camp (the judge) who, on 17 December 2014, allowed the appeal on a Refugee Convention ground and upon Article 8 ECHR grounds on the basis that the Claimant faced the real risk of inhuman or degrading treatment and punishment or torture as a result of perceived political opinion. The judge did not go on to consider the issue of whether or not the Claimant formed part of a PSG for the purposes of the Refugee Convention [decision [D]30].
4. It is fair to say that the judge's analysis of the Refugee Convention issue did not include internal relocation and domestic protection were not assessed, apparently because it was considered the threats were posed by the state.
5. The critical issue helpfully identified by Mr Mills was whether or not the Claimant should be regarded as exempt from military service because of blindness in her left eye as opposed to be required to do other, if non fighting, military service; when she had only one eye.
6. This appears to me to have been an issue that could readily have been resolved by appropriate enquiries by the parties as to what is meant by being "blind for the purposes of military exemption" but it never was. The judge found the Secretary of State's view on the matter was speculation. So the judge was invited to consider whether such an exemption did or did not apply to the factual circumstances of the Claimant in assessing whether or not the Claimant was a draft evader.
7. The invitation of the parties left the judge in the position that he was to consider the matter on a rational basis but ultimately upon speculation, which he duly did. His conclusion was not rational or perverse.
8. Mr Mills with some effort sought to persuade me that the judge's speculation was simply unwarranted because there was no clear answer, but that was indeed the problem the judge faced and one which he sought to resolve. Whilst I might not have reached the same conclusion by any means, it does not seem to me that that is the proper basis to interfere with the judge's findings, particularly when the respondent did not provide any possible answer to the question.
9. In the circumstances I find that the judge was entitled to conclude that the Claimant was at risk under the Refugee Convention for the reasons he gave and as such that a similar risk under the basis of Article 3 of the ECHR. Unfortunately those matters were not resolved.
10. I do not find the Original Tribunal made an error of law on the critical issues arising. The Original Tribunal's decision stands.
11. The Secretary of State's appeal is dismissed.

Signed

Date 20 March 2015

Deputy Upper Tribunal Judge Davey