



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

Appeal Number: AA/06026/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 17<sup>th</sup> December 2014**

**Determination  
Promulgated**

**On 12<sup>th</sup> January 2015**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**S G - APPELLANT  
(PLUS TWO DEPENDENT CHILDREN)**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Faryl, of Counsel

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, who claims to be a citizen of Eritrea appeals with permission against the decision of the First-tier Tribunal (Judge Herwald) which in a determination promulgated on 25<sup>th</sup> September 2014, dismissed her appeal against the Respondent's refusal of 11<sup>th</sup> August 2014 to grant

her asylum/Humanitarian Protection in the UK and to issue removal directions.

2. The Appellant SG is the mother of the two dependant children. The children are minors and for this reason I grant the Appellant anonymity in these proceedings.

### **The Appellant's Claim**

3. The Appellant SG claims she is a citizen of Eritrea born 23<sup>rd</sup> July 1985. Her claim to Eritrean nationality is doubted by the Respondent. She claims to have been born in Asmara but moved to Ethiopia with her parents when aged 1 year.
  - (i) She claims to be not only an Eritrean national but also a Pentecostal Christian. She was born in Eritrea on 23<sup>rd</sup> July 1985 but the following year her parents moved with her to Ethiopia. A sister and her mother died in 1989 and her father converted to Pentecostal Christianity when she was 4 years old.
  - (ii) In February 2000 she was deported back to Eritrea along with her father, younger brother and younger sister. She lived with an uncle but in December 2000 married an Eritrean soldier, and lived with him in Eritrea until March 2003 in relative safety.
  - (iii) From May 2002 her religion was banned. The police raided her house in March 2003 and she was "detained and harassed and subjected to ill-treatment as well as interrogation". She said that the police were rough and violent. She was detained for nineteen days at a police station.
  - (iv) On the last day of detention she reported "I was told to leave my cell to clean a van. While doing this, the police officer who was supervising me told me not to panic but to hide whilst the truck drove away from the prison".
  - (v) She was driven to an unknown place where she saw her uncle "who informed me that my life was in danger and my uncle had paid a bribe to secure my escape". She followed unknown men for about eight hours and then travelled by car to Sudan where she lived for twenty days.
  - (vi) In April 2003 illegal people smugglers got her a "passport" - she did not say what sort of passport - but she went to Turkey. She stayed in Turkey for a month and then in May or June 2003 travelled to Greece.
  - (vii) She worked illegally in Greece for a period of time. In 2005 her husband joined her there. They stayed there long term. A child was born there. She did not work after the birth of her child and her husband supported her.

(viii) She was in regular contact with her family in Eritrea. She said that her brother had been taken to a military camp and her younger sister had gone away. There was no further contact with her uncle after 2008.

(ix) All was going well in Greece, and she attended church. But on 8<sup>th</sup> October 2013 she reported

“We had no choice but to leave Greece, as a ...group...targeted Africans and it was no longer safe to live in Greece. My husband had been detained in Greece for living illegally. I was pregnant. I had no income and the landlord evicted both me and my child”. So she arranged for another people smuggler, to help her leave the country.

(x) In October 2013 she flew to France. She said “we lived in a jungle” On 25th November 2013 she and her son hid in the back of a lorry and travelled to the UK.

4. The Respondent did not accept that the Appellant was an Eritrean national; or that she was a Pentecostal Christian as claimed, or that she had exited Eritrea illegally. It is of relevance to note here that the Appellant’s representatives wrote to the Ethiopian Embassy to enquire if she was eligible for Ethiopian nationality. It is reported that the Appellant was told that she was not eligible as “she has no documents to support her claim”.

### **The First-tier Tribunal Hearing**

5. The Appellant’s appeal came before FtT Judge Herwald on 18<sup>th</sup> September 2014. Judge Herwald considered the Appellant’s claims, had regard to the background material and then made findings dismissing her appeal.

6. He noted at [14] that there were problems with the Appellant’s general credibility, in particular when assessing her claim to Eritrean nationality. For sound reasons he came to the conclusion that the Appellant on balance was not Eritrean as claimed. His reasons for those findings are as follows;

(i) The Appellant did not speak the language of Eritrea.

(ii) There were difficulties with her claim that Ethiopia had refused to recognise her as a national of that country.

(iii) He did not accept that the Appellant fled Eritrea as claimed.

7. In coming to these conclusions the Judge took into account the Appellant’s answers in interview and this led him to the further conclusion that the Appellant was not a life-long Pentecostal Christian as claimed.

8. Having made those findings the Judge concluded that the Appellant was not at risk on return to Eritrea and that she had not exited illegally from there.

### **The Upper Tribunal Hearing**

9. Before me Miss Faryl on behalf of the Appellant relied in the main, on the grounds seeking permission to appeal. She claimed support also from the grant of permission and said that the Judge's error of applying the wrong standard of proof on the Appellant's nationality led the Judge to an improper assessment of the evidence before him. She submitted that such error made the decision unlawful and that the appropriate remedy would be for the matter to be remitted to the First-tier Tribunal for a fresh rehearing.
10. Mr Diwnycz staunchly opposed Miss Faryl's submissions. He relied on his Rule 24 response and emphasised that this is an appeal where credibility lies at the heart of the issues. The Judge fully and properly reasoned that he could not believe the Appellant's account. There was ample evidence before the Judge to show why he should not believe the Appellant's core account. Whilst the Judge may have wrongly set out the appropriate standard of proof, there was nothing to show that the correct standard had not been applied when one looked at the substance of the determination. Thus any error was not material and the decision was sustainable.

### **Consideration**

11. The grounds seeking permission identify two bases for claiming that the Judge erred in his decision-making. First it is claimed that he applied the wrong standard of proof relating to the Appellant's nationality (and from this flowed errors in the overall assessment of the evidence). It is correct that in paragraph [7] to [9] of his determination the Judge sets out what are clearly standard paragraphs which are clumsily phrased and for which the Judge is rightly criticised. However what matters is whether the self-direction in paragraphs [7] to [9] shows that the Judge materially misdirected himself. The answer to this is found within the body of the determination, which includes the Judges findings.
12. What was before the Judge was a claim by the Appellant that she is a national of Eritrea and is at risk of return there because of her Pentecostal Christianity and illegal departure. He found she was not someone who could be believed on the core issues. In coming to those conclusions he sets out fully his reasons for not accepting the core of the Appellant's claim. It is clear he kept fully in mind all the surrounding evidence including the Appellant's lack of claiming asylum in Greece and France despite being in the former country for several years, his finding that the Appellant could not answer basic questions concerning the Pentecostal faith and her somewhat late claim that she was distracted when answering questions in interview.

13. In my judgment the determination shows good reasons why the Judge gave little credence to the Appellant's claims. Any misdirection in paragraph [7] to [9] provides no substance to the claim that the Judge materially erred in his assessment of the evidence before him. It is clear when reading the determination that the Judge kept in mind the appropriate standard of proof.
14. Following on from that the second basis for seeking permission revolves around criticism levelled at the Judge stating he failed to make a finding on the Appellant's claim of being deported (with her family) from Ethiopia. It is said that the Judge failed to properly take into account the relevance of the Appellant approaching the Ethiopian Embassy in London to make enquires about whether or not she could obtain Ethiopian nationality. In my judgment this criticism is unfounded.
15. All that there was before the Judge was an assertion by the Appellant that she had approached the Ethiopian Embassy and been interviewed there and refused Ethiopian nationality. In support of this a letter from her representatives addressed to the Embassy dated 9<sup>th</sup> September 2014 was produced. So far as establishing her claim to Eritrean nationality it is hard to see how a claim that she attended the Ethiopian Embassy to enquire about nationality there goes to establishing a claim to Eritrean nationality.
16. The matter which was before the Judge was whether the Appellant could show a reasonable likelihood that she was an Eritrean national. There appears to have been two misconceptions throughout this case. Firstly in the Appellant's representatives' letter they state in the fourth paragraph,

*"It has been the view of the Secretary of State of this country that she is an Ethiopian national ....*
17. Nowhere, in the reasons for refusal letter nor the subsequent correspondence sent by the Secretary of State, do I see that the Respondent has given a view that the Appellant is an Ethiopian national. The Respondent's view is limited to the fact that the Appellant has not demonstrated that she is an Eritrean national such as to make her at risk if returned there. That is not the same as the Respondent saying that the Appellant therefore is an Ethiopian national.
18. The second misconception arises in the grounds of appeal. In paragraph 12 of the grounds seeking permission it is said:

*"...the appellant approached the Ethiopian Embassy in London to make enquiries about his (sic) claim to Ethiopian nationality but she was refused and a letter from the Ethiopian Embassy was before the IJ."*

No such letter was before the Judge. The fact is that the Ethiopian Embassy, so far as I can see, made no response to the Appellant's representatives' letter of 9<sup>th</sup> September 2014 at all. And what has to be borne in mind is that the Judge found the Appellant to be lacking in credibility.

19. To summarise therefore the Judge's findings are ones which were open to him on the evidence before him and ones for which he has given full reasons in his findings. In my view the Judge's assessment of the evidence before him and the findings he made are ones which were reasonably open to him; in other words they cannot be described as irrational or perverse.
20. For the foregoing reasons the decision of the First-tier Tribunal discloses no material error and the decision dismissing the Appellant's appeal stands.

### **Decision**

The appeal is dismissed.

### **Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him 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

Upper Tribunal Judge Roberts