Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10060/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision and Reasons Promulgated**
On 16 September 2015	**On 24 September 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

MA
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Madubuike
For the SSHD: Mr Harrison (Senior Home Office Presenting Officer)

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. This appeal is anonymised because it refers to an asylum claim.

2. The appellant is a citizen of Eritrea who claimed asylum in the United Kingdom on 29 July 2014. This claim was refused by the SSHD on 8 November 2014 for reasons set out in a detailed letter of that same date. The appellant appealed to the First-tier Tribunal against a decision to remove her on asylum grounds.

Summary of asylum claim

3. The appellant contends that she has a well-founded fear of persecution for reasons relating to the past adverse interest the authorities had in her as a result of her husband's desertion from military service as well as the fact that she has left Eritrea illegally.

Procedural history

4. This is a matter that has previously been considered by First-tier Tribunal Judge Pickup. He dismissed the appellant's appeal in a detailed decision dated 12 March 2015. The decision contains extensive reasoning for finding the appellant's account to be incredible.

5. In a decision dated 7 July 2015 Deputy Upper Tribunal Judge Mailer considered it arguable that Judge Pickup failed to have regard to relevant background evidence when making his credibility findings.

6. The SSHD has submitted a rule 24 notice dated 30 July 2014 in which it is submitted that Judge Pickup was entitled to find the appellant's account incredible given the inconsistencies and discrepancies identified.

Hearing

7. At the beginning of the hearing I indicated a preliminary view to both representatives to the effect that the Judge had erred in law in failing to take into account the background evidence supportive of the appellant's claim and also failed to take into account the appellant's witness statement rebutting the SSHD's reasons for refusal letter ('refusal letter').

8. Mr Harrison agreed that these constituted material errors of law such that the decision should be set aside and remade by the First-tier Tribunal.

9. Both representatives agreed that the decision needed to be remade completely and that given the nature and extent of those findings, this should be done in the First-tier Tribunal. I have had regard to para 7.2 of the relevant Senior President's Practice Statement and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Discussion

10. The decision under appeal is undoubtedly detailed. It endorses almost it in its entirety the reasons provided in the refusal letter for rejecting the appellant's evidence. The rejection of the appellant's claim is clear. The Judge regards the "inconsistencies and discrepancies [to be] such that [he] cannot accept any part of the appellant's factual case" [34]. These inconsistencies and discrepancies are identified in the paragraphs beforehand [28-32] as well as subsequently [38-39]. The Judge's findings are not expressly attributed to the refusal letter but it is very clear that the vast majority of his findings relate to inconsistencies taken directly from the refusal letter under the heading "you have been targeted by the Eritrean authorities because your husband deserted the military" at [a to n]. There is nothing wrong with a Judge agreeing with reasons provided in the refusal letter. However where, as here, an appellant relies upon background evidence to specifically support an aspect of her claim rejected as implausible or incredible in the refusal letter the Judge is obliged to consider this and provide reasons why he prefers the analysis in the refusal letter. Similarly where, as in this case, an appellant prepares a witness statement seeking to rebut the reasons offered in the refusal letter the Judge is obliged to address this and to offer sufficient reasoning as to why he prefers the arguments within the refusal letter.

11. In this case the Judge has failed to take into account background evidence supportive of the appellant's claims. I accept that the Judge has referred to background evidence but this relates mainly to that which is highlighted within the refusal letter and not the background evidence relied upon on behalf of the appellant. There are three examples of this within the Judge's decision. First, the Judge has accepted the refusal letter's argument that the appellant would not be held responsible for her husband's desertion when she did not become his guarantor [30] without considering the evidence in the OGN at 3.12.15 that families of deserters are often punished. Second, the Judge has drawn adverse inferences from the husband's failure to contact his family members [31] without considering that this might be explained by the fact that the family members may be punished if they have this information.

12. Third, the Judge accepted the reasoning in the refusal letter that it is implausible that the authorities did not pursue the appellant when she dropped out of school [38] when she explained that she was engaged at the time and there was evidence in the OGN (3.12.5 and 3.12.6) to support the claim that married woman may not be pursued. In addition, the appellant carefully explained in her rebuttal witness statement dated 19 February 2015 why she in particular was not pursued. The Judge has referred to the background evidence relied upon by the SSHD in the refusal letter and the appellant's first statement but has not taken into account the background evidence relied upon by the appellant or her rebuttal witness statement on this issue.

13. The Judge has also endorsed the point made in the refusal letter that the

appellant was inconsistent as to when she left Eritrea [34]. The Judge points out that she stated that she left the day after release from detention on 21 August 2013 but in her screening interview she said she left on 1 September 2013. This wholly fails to take into account the fact that the appellant said at her asylum interview that she left Eritrea on 1 September (Q9). She said that she was released from detention on 21 August (Q97) because she was sick (Q106) and she was taken to a hospital (Q129), where she stayed for 10 days (Q130) and then she left Eritrea a day after discharge from hospital (Q133). That chronology of events is repeated in the appellant's witness statement at [11-13] and in her rebuttal witness statement [4]. It is wholly consistent with her claim in the screening interview that she left Eritrea on 1 September. The Judge has not engaged with or addressed this evidence and has merely accepted the (erroneous) contention in the refusal letter at [h] without taking into account or carefully scrutinising all the evidence available.

14. I accept that the First-tier Tribunal has decided to reject the appellant's account for a number of reasons, all of which I have not addressed above. However, I am not confident that the decision would have been the same on the basis of the other reasons. The errors I have focussed upon are sufficiently wide-ranging and fundamental to lead me to the view that the conclusion on credibility is unsafe and must be remade entirely.

Decision

15. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.

16. The appeal shall be remade by First-tier Tribunal de novo.

Directions

(1) The appeal shall be reheard de novo by the First-tier Tribunal sitting in Manchester (TE: 2.5hrs) on the first date available. Tigrinya interpreter necessary.

(2) 14 days before the hearing date the appellant shall file and serve an indexed and paginated bundle (to replace all previous bundles) containing only those documents relevant to the rehearing that are not contained in the SSHD's bundle, including a more detailed and comprehensive rebuttal witness statement cross-referencing to the background evidence and responses at interview.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

17 September 2015