



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

Appeal Number: IA/47292/2014

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons

On 23 July 2015

Promulgated

On 22 September 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SEM HAR HAILE BEREKET
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, a Senior Home Office Presenting Officer
For the Respondent: Mr R Skyler, instructed by Singhania & Co Solicitors

DECISION AND REASONS

1. The respondent, Semhar Haile Bereket, was born on 25 May 1986 and is a female citizen of Eritrea. The appellant had appealed against the decision of the respondent dated 27 October 2014 to refuse her leave to remain in the United Kingdom and to remove the appellant by way of directions

under Section 47 of the Immigration, Asylum and Nationality Act 2006. The First-tier Tribunal (Judge Cox), in a decision promulgated on 23 March 2015, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall hereafter refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. Mr Skyler, for the appellant, acknowledged that the judge had erred in law by allowing the appeal under HC 395, in particular E-DVR ILR 1.2. At [26] the judge had written:

As can be seen paragraph E-DVR ILR 1.2 specifically refers to the applicant's first and last grant of limited leave to remain being granted under the Immigration Rules...

3. The judge went on to conclude at [27]:

having carefully considered E-DVR ILR 1.2 I am satisfied that the natural ordinary meaning of 'last grant of limited leave' could include leave granted on a discretionary basis. I am satisfied the appellant's last grant of limited leave to remain in the UK was as a partner of a person with ILR in the UK. Accordingly, I am satisfied the appellant met the requirements of paragraph E-DVR ILR 1.2.

4. The judge acknowledged [23] that both parties agreed that the appellant's last grant of limited leave had been on a discretionary basis and outside the Immigration Rules. As the grounds point out:

the appellant has never been granted leave as a partner of a British citizen or a person settled in the UK. The last leave she was granted was discretionary leave. The wording at paragraph E-DVR ILR 1.2 is clear and, therefore, the Tribunal's finding at [27] is incorrect. It applied the natural and ordinary meaning test to only a small part of the paragraph and then redefined it.

5. Mr Skyler and Mr Diwnycz agreed that the judge's construction of the Rule was incorrect. The Rule clearly refers to the "last ground of limited leave"; both parties now agree that the proper construction of this Rule cannot include discretionary leave to remain given outside the Immigration Rules.

6. In addition to claiming a right to remain under the Immigration Rules, the appellant had also appealed on asylum and Article 3 ECHR grounds. She claims that "due to her political and religious and social circumstances and the existing situation in Eritrea, she will be ill-treated by the authorities ..." (see Paragraph 21 of her grounds of appeal to the First-tier Tribunal). Judge Cox noted [17] that "the appellant also stated that, as a practising Christian, she fears returning to Eritrea. However, she has not formally lodged a claim for asylum with the respondent." He makes no further reference to the asylum/Article 3 ECHR grounds of the appellant, perhaps because he was content to allow the appeal under the Immigration Rules. However, he erred in law by failing to deal with a ground of appeal (Article 3 ECHR) validly raised by the appellant. Therefore, although the appellant cannot succeed under the Immigration Rules relating to domestic violence,

she is entitled to a proper consideration of her appeal on Article 3/asylum grounds. For that reason, I have remitted the matter to the First-tier Tribunal (not Judge Cox) for that Tribunal to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 23 March 2015 is set aside. None of the findings of fact shall stand. The appellant cannot succeed in her appeal under paragraph E-DVR ILR 1.2 of HC 395 (as amended). The First-tier Tribunal (not Judge Cox) will therefore determine the appeal on asylum/Article 3 ECHR grounds and remake the decision accordingly.

No anonymity direction is made.

Signed

Date 20 September 2015

Upper Tribunal Judge Clive Lane