



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04823/2015

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 17<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

S A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No appearance  
For the Respondent: Mr A McVeety (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Kempton promulgated on 10<sup>th</sup> September 2015, following a hearing at Hatton Cross on 17<sup>th</sup> August 2015. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal and thus the matter comes before me.

**The Appellant**

2. The Appellant is a female, was born on 3<sup>rd</sup> January 1991, and claimed to be a citizen of Eritrea. Apart from this, everything else is unclear about this matter. This was not only on account of the way in which the Appellant put her own case, but also given the highly unsatisfactory nature of the refusal letter, which put the judge hearing this

appeal in quite unnecessary difficulty. What is known is that she appealed against the decision of the Respondent dated 5<sup>th</sup> March 2015, rejecting her claim for asylum, and for humanitarian protection under paragraph 339C of HC 395.

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

3. The Appellant claimed to fear persecution on account of her religion if returned to Eritrea, in that she belongs to the Pentecostal Christian tradition, and was of Tigriniya ethnic group, such that she spoke Amharic. The Respondent rejected this assertion, stating that she was an Ethiopian national because she had lived there. The Appellant asserted that no questions were asked in the interview about Ethiopia. She even stated that on the advice of her solicitor she went to the Ethiopian Embassy on 16<sup>th</sup> April 2015 to enquire if she can have Ethiopian nationality, which did not work out.

### **The Judge's Findings**

4. The judge observed that the Appellant was asked (at question 28) in her interview about her father registering in 1993 for an Eritrean referendum when he was in Ethiopia at the time. The Appellant said that this was because her father cared about Eritrea. She did not know when he registered. When he lived in Ethiopia, there was no problem between Eritrea and Ethiopia (paragraph 24). She now stated that she attends the Rhema Church and attends on Sundays and on Tuesdays for Bible Study (paragraph 27).
5. The judge observed that "clearly she fears return to Eritrea on account of saying that she is a Pentecostal and that she would be persecuted there on account of those religious beliefs" (paragraph 30). However, the judge found that he could not be satisfied that the Appellant was "a genuine Pentecostal without some more detailed oral evidence from a pastor or church in Sudan to say that she had indeed been baptised there some years ago" (paragraph 30).
6. A further complication in this appeal was that there was an inconsistency between the refusal letter and the removal directions. The refusal letter stated that the Appellant's removal would not be to Eritrea. However, the removal directions stated that she would be returned to Eritrea. The judge concluded that "the Respondent has not engaged in any meaningful manner with return to Ethiopia. The Appellant has in fact tried to obtain evidence of her nationality as Ethiopian from the Ethiopian Embassy, but has been unable to provide any written evidence of the outcome of her meeting there. The inference which I draw from the totality of the Appellant's evidence is that she would not be particularly worried about return to Ethiopia, if the Ethiopians would accept her. However, the removal directions are for Eritrea" (paragraph 33).
7. All of this, as the judge stated, left him "in a very difficult situation" (paragraph 33). The judge went on to say that, "given the confusion in the documents before me and served upon the Appellant, it is very difficult to know what to do in this case" (paragraph 34).
8. In terms of the findings made by the judge, it was observed that "the Appellant has not made out an adequate case for her religion being a Convention reason, which

would cause her problems in Eritrea. She has provided no proof of any worship as a Pentecostal, other than recently in the UK" (paragraph 34).

9. The judge went on to say that "without some more evidence of the Appellant's adherence to Pentecostalism and that such has in fact been her religion for a major part of her life, I am not in a position to find that the Appellant runs a real risk of persecution on account of her religion" (paragraph 39).
10. The judge then went on to consider the difficulty posed by the removal direction, but observed that, "taking the removal directions at face value, the Appellant has not shown a real risk of persecution in Eritrea on account of her religion ..." (paragraph 42).
11. The appeal was dismissed.

### **Grant of Permission**

12. The grant of permission is dated 5<sup>th</sup> October 2015. It observes that there are first, no findings as to whether the Appellant was from Ethiopia or Eritrea. Second, there is no consideration as to the Appellant's claimed Pentecostal faith and, if she was from Eritrea whether this would place her at risk on return. Third, there are no findings as to her illegal exit, if the Appellant is from Eritrea. All of this, it was stated pointed to an arguable error of law.

### **The Hearing**

13. At the hearing before me on 17<sup>th</sup> May 2018, Mr McVeety, appearing on behalf of the Respondent Secretary of State, said that there was an error of law in this case because of a failure to make findings of fact in relation to crucial matters which were before the judge. The Appellant's claimed persecution was on religious grounds. Yet, there was no finding regarding what religion the Appellant was. Cases from Eritrea suggested that illegal exit would place somebody at risk of ill-treatment. There was no finding in relation to that and, given that the Appellant had lived in Ethiopia, the question as to whether she was Eritrean or Ethiopian needed a firm answer.
14. There was no-one present on behalf of the Appellant and the Appellant herself did not attend and so I heard no submissions.

### **Error of Law**

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are those given in the grant of permission by the Tribunal on 5<sup>th</sup> October 2015, as endorsed by Mr McVeety before me.
16. There is no doubt that the judge was placed in a most unenviable position given the absurdity between what was stated in the refusal decision and the removal directions, which rendered together, made no sense whatsoever.

17. Mr McVeety went so far as to say that it may well be that the Respondent Secretary of State may withdraw the refusal decision and issue another one, given that it was difficult to make any sense of the decision.
18. That, however, must be a matter for the Secretary of State. Suffice it to say, that I make a finding that there is an error of law and that this matter needs to be remitted back to the First-tier Tribunal, to be determined by a judge other than IJ Kempton so that matters can be looked at afresh with firm findings made.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Kempton.

An anonymity direction is made.

### **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 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  
Deputy Upper Tribunal Judge Juss

Date  
8<sup>th</sup> September 2018