



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13662/2016

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham
On 4th June 2018

Decision & Reasons Promulgated
On 22nd June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

ROMAN SEMERE GEBREMARIAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes, Counsel instructed by Halliday Reeves Law Firm
For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Eritrea born on 23rd February 1987. She entered the UK clandestinely on 31st May 2016 and applied for asylum that day. That application was refused for the reasons given in the Respondent's Decision dated 28th November 2016. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge P J M Hollingworth (the Judge) sitting at Nottingham Justice Centre on 24th December 2017. He decided to dismiss the appeal but the Appellant was granted leave to appeal that decision and at a hearing before me on 16th November 2017 I set aside that decision and directed that the decision in the appeal would be remade by the Upper Tribunal at a later hearing.

Remake Hearing

2. At the remake hearing, there was no further evidence. It proceeded by way of me hearing submissions from the representatives. Ms Aboni addressed me first when to begin with she said that she relied upon the comments made in the Reasons to Refuse Letter. She went on to say that the First-tier Tribunal Judge was not satisfied that the Appellant had left Eritrea illegally and that finding had not been disturbed by my decision in respect of an error of law. Therefore the Appellant will not be considered a deserter or a draft evader on her return to Eritrea. She left Eritrea when she was only 13 years of age and was never served with any draft papers. She was not at risk on return as a deserter or a draft evader. As regards nationality, Ms Aboni submitted that as the Appellant's mother was an Ethiopian citizen, the Appellant could obtain Ethiopian citizenship. The Appellant had never denied that this was the case, but she had done nothing to seek Ethiopian nationality.
3. In response, Mr Vokes said that it was accepted that the Appellant was born on 23rd February 1987 and had left Eritrea some time in 2000 when only 13 years of age. He agreed that she would not be considered a deserter or a draft evader on return. However it was apparent from the decision in **MST and Others (national service - risk categories) Eritrea (CG) [2016] UKUT 00443 (IAC)** that she will be required to commence her national service. The Appellant had been absent from Eritrea for a lengthy period of time, and she remained below the age limit for national service for women in Eritrea. This was regardless as to whether the Appellant had left Eritrea illegally or not. As regards the Appellant's nationality, Mr Vokes argued that although the Appellant was potentially an Ethiopian national, it was only speculation that she could obtain Ethiopian nationality, and the fact of the matter was that at the date of the hearing she had not obtained Ethiopian nationality and therefore would be returned to Eritrea. It was therefore my task to decide if the Appellant was at risk on return to Eritrea.
4. At the hearing I reserved my decision which I now give.
5. I find that the Appellant is at risk on return to Eritrea and on that basis I allow her appeal. I agree with the submission of Mr Vokes that I cannot consider the Appellant as a possible Ethiopian citizen, but must consider the risk to her on her return to Eritrea which is the destination to which she will be returned. What is not in dispute is that the Appellant is an Eritrean citizen who regardless of how she left the country, has been absent from Eritrea for a period of eighteen years. She is now 31 years of age and is therefore eligible for national service on her return. It was established in the Country Guidance case of **MST** that the performance of national service in Eritrea amounts to persecution. Therefore the Appellant comes within the category of people identified in **MST** whereby there is a serious possibility that on return to Eritrea they will be persecuted.

Decision

The appeal is allowed on asylum grounds.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Dated 19th June 2018

Deputy Upper Tribunal Judge Renton

TO THE RESPONDENT
FEE AWARD

In the light of my decision to remake the decision in the appeal by allowing it, I have considered whether to make a fee award. As no fee was paid by the Appellant, I make no fee award.

Signed

Dated 19th June 2018

Deputy Upper Tribunal Judge Renton