Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01857/2018**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 15 January 2019	**On 8 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

NG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain, instructed by Fountain, solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1991 claims to be a citizen of Eritrea. She arrived in the United Kingdom on 30 January 2017 and applied for asylum. By a decision dated 26 January 2018, the respondent refused to grant the appellant asylum. She appealed to the First-tier Tribunal which, in a decision promulgated on 27 March 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The judge found that the appellant was not a citizen of Eritrea but rather citizen of Ethiopia. There are four grounds of appeal which challenge than outcome. First, the appellant asserts that the judge failed to have proper regard to the appellant's nationality in the context of the Eritrea

Proclamation on Nationality. Secondly, the appellant asserts that the judge failed to apply the correct standard of proof to the determination of her nationality; that standard should be the balance of probabilities not the lower standard of reasonable likelihood (see *Hamza* [2002] UKIAT 05185). Thirdly, the appellant claimed to have a partner and child living in Sudan. She claims that her partner is Eritrean. The appellant asserts that the judge failed to identify whether there existed very significant obstacles to the appellant returning to either Eritrea or Ethiopia.

3. I find grounds of appeal have no merit. First, the grounds failed to explain why considering the question of nationality in the context of the Proclamation was either necessary or would have produced a different outcome. The judge carried out a detailed analysis of the evidence. By reaching the conclusion that the appellant is Ethiopian, the judge had regard to relevant evidence and excluded irrelevant matters. In particular, the judge identified a number of inconsistencies in the appellant's evidence. Those inconsistencies, combined with the fact that the appellant claimed to have spent 17 years living in Ethiopia where she had accessed employment and education and where she had spoken the national language fluently, led the judge conclude that the appellant is Ethiopian. I find that it is not arguable that that outcome was unavailable to the judge on the evidence. As regards the standard of proof, it may well be the case that the judge has applied the lower standard rather than that of the balance of probabilities. The burden of proof was on the appellant; it was for her to prove that she was Eritrean, as she claimed. If the judge applied the standard of proof of reasonable likelihood to the appellant's evidence rather than a standard of the balance of probabilities then that can only have been to the appellant's advantage. Moreover, an examination of the reasons given by the judge for reaching the finding regarding nationality indicates that the same outcome would have been achieved irrespective of the standard of proof. As regards the appellant's claimed partner and child, is not clear at all why the fact that they may be living in Sudan should provide an obstacle to the appellant returning to her country of nationality, namely Ethiopia.

4. Mr Hussain, who appeared for the appellant, accepted that the question of nationality is critical in determining whether the appellant would be at risk on account of her claimed Pentecostal Christianity. Granting permission, Judge Haria had observed that the judge had failed to make a clear finding as to whether or not the appellant is a Pentecostal Christian. Had the judge found that the appellant is in Eritrean, such an error may well have been fatal to the decision. However, as the judge observed, as the appellant has been found to be an Ethiopian, she would not be at risk on return to that country whether she is a Pentecostal Christian or not.

5. I am satisfied that the judge's analysis is legally sound. I do not find that the judge has erred in law for the reasons advanced in the grounds of appeal, the grant permission or at all.

Notice of Decision

This appeal is dismissed.

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 his 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 2 February 2019

Upper Tribunal Judge Lane