



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

Appeal Number: PA/02742/2018

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**Decision & Reasons  
Promulgated  
On 20 May 2019**

**On 28 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**AT  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Goodwin instructed by Albany Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

## **Background**

2. The appellant is a citizen of Eritrea. She arrived in the United Kingdom on 14 September 2017 and claimed asylum the next day. On 14 February 2018, the Secretary of State refused the appellant's application on asylum, humanitarian protection and on human rights grounds.
3. The appellant appealed to the First-tier Tribunal. In a determination sent on 1 October 2018 the First-tier Tribunal (Judges Davidge and Clarkson) dismissed the appellant's appeal on all grounds.
4. The appellant sought permission to appeal. Permission was initially refused by the First-tier Tribunal but, on 4 January 2019 the Upper Tribunal (DUTJ Davey) granted the appellant permission to appeal.
5. The respondent did not file a rule 24 notice.
6. Relying upon the grounds of appeal, Mr Goodwin, who represented the appellant, submitted that the First-tier Tribunal had erred in law by concluding, in effect, that the appellant could safely return to Ethiopia because she could acquire that nationality.
7. First, Mr Goodwin submitted that the First-tier Tribunal had been wrong to take into account that the appellant had not attended at the Ethiopian Embassy in London in order to, in effect, use her "best efforts" to establish that she was not entitled to Ethiopian nationality. That point, Mr Goodwin submitted, was based upon the decision of ST (Ethnic Eritrean - nationality - return) Ethiopia CG [2011] UKUT 00253 but ST was distinguishable as there the individual was said to have lost his Ethiopian nationality.
8. Secondly, Mr Goodwin submitted that under Ethiopian law an individual could not be a "dual national" and it was no part of the requirement to use "best efforts" that an individual should be required to renounce their nationality (here of Eritrea) in order to acquire another nationality.
9. Thirdly, Mr Goodwin submitted that, in any event, the appellant's ability to acquire Ethiopian nationality was, under Ethiopian law, discretionary rather than an entitlement. As a consequence, the appellant's situation fell within category (iii) recognised by the Upper Tribunal in KK and others (Nationality: North Korea) Korea CG [2011] UKUT 92 (IAC) such that it could not be said that she is "of" or "has" Ethiopian nationality for the purposes of applying the Refugee Convention.
10. In response, Mr Howells, who represented the Secretary of State, accepted that, in the light of the expert report, the First-tier Tribunal had erred in law in its approach to the issue of whether the appellant could acquire Ethiopian nationality. He accepted that the appellant's ability to acquire Ethiopian nationality was as set out in Art 5 of the relevant Ethiopian law cited by the expert (Dr Campbell) at para 3 of his report at pages C2-C3 of the appellant's bundle. Mr Howells accepted that, even if the appellant were to renounce her Eritrean nationality, her ability to acquire Ethiopian

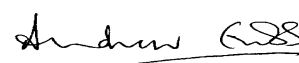
nationality involved discretion and was not an entitlement in the light of the factors set out at Art 5.1-5.8. He accepted that, therefore, the appellant's situation fell within category (iii) of KK and that her refugee claim could not, as a result, be determined on the basis that she was entitled to acquire Ethiopian nationality.

11. Having taken time to consider the Secretary of State's position, Mr Howells accepted that the First-tier Tribunal's determination should be set aside. Further, he accepted that the decision should be re-made allowing the appellant's appeal under the Refugee Convention on the basis that she is a national of Eritrea who is outside her country of nationality and has a well-founded fear of persecution for a Convention reason there – the risk to her in Eritrea was accepted by the First-tier Tribunal at para 16 of its determination. Mr Howells conceded that the appellant's appeal should, therefore, be allowed.
12. In the light of the position taken by Mr Howells, in relation to the appellant's ability to claim Ethiopian nationality, even if she were to renounce her Eritrean nationality, it is unnecessary for me to determine the first two points relied upon by Mr Goodwin.
13. The First-tier Tribunal erred in law by concluding that, in effect, the appellant was entitled to acquire Ethiopian nationality when, in fact, as is clear from the Ethiopian law and the expert's report, her ability to acquire Ethiopian nationality (even if she were to renounce her Eritrean nationality) is discretionary and not an entitlement so that it fell within category (iii) of KK.
14. Mr Howells, having advanced no other basis upon which he considered that the First-tier Tribunal's decision could be sustained, I set aside the First-tier Tribunal's decision to dismiss the appellant's appeal. I re-make the decision, and in accordance with the Secretary of State's concession, I allow the appellant's appeal on asylum grounds.

### **Decision**

15. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision is set aside.
16. The appeal is allowed on asylum grounds.

Signed



A Grubb  
Judge of the Upper Tribunal

17 May 2019