Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10568/2016

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 8th August 2019	**On 12th September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS H M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Howard (Solicitor)
For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Jessica Pacey, promulgated on 18th July 2017, following a hearing at Birmingham on 26th June 2017. 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 claims to be a citizen of Eritrea, was born on 8th February 1988, and is a female. She appealed against a decision of the Respondent rejecting her claim for protection and for humanitarian protection pursuant to paragraph 339C of HC 395, in a decision dated 21st September 2016.

The Appellant's Claim

3. The essence of the Appellant's claim is that she is a Pentecostal Christian. However, she did not attend church in Eritrea. She practised her religion from home. She left Eritrea for Sudan in 2002 where she was raped. She remained in Sudan until 2008. She travelled to Turkey and from there to Greece. She has a daughter. The daughter was born to her in Greece on 1st September 2009 as a result of the rape in Sudan. She did claim asylum in Greece on 31st July 2007. She arrived in the UK on 29th October 2015. She claimed asylum in this country on 29th October 2015. She married in 2010 but separated in 2012. She cannot now return to her home country because she would not be able to practise her religion and would be imprisoned or killed.

The Judge's Findings

4. The first question before the judge was whether the Appellant was indeed, as she claimed, a national of Eritrea. For reasons that the judge gave at length, she concluded that the Appellant was not a citizen of Eritrea. The judge then proceeded to consider the Appellant's particular aspects of her claim and rejected those outright as well. She simply did not find the Appellant to be credible in any respect or form. The appeal was dismissed.

Grounds of Application

5. The grounds of application raise a number of issues, alleging that the decision of the judge fell into error for failing to consider the claim in a fair and proportionate manner. However, permission to appeal was only granted on the question that the judge did not make a finding on Article 8 issues. The decision of the judge was silent on the issue of paragraph 276ADE. It was silent on Article 8. This was despite the judge noting (at paragraph 3) that the ECHR was part of the Appellant's case. The skeleton argument from the Appellant's side also raised the point. The Records of Proceedings noted that the Appellant's representative relied upon the skeleton argument. Therefore, the judge ought to have made some reference to Article 8 considerations. For this reason, on 14th January 2019 permission to appeal was granted by the Tribunal.

Submissions

6. At the hearing before me on 8th August 2019, Mr Howard, appearing on behalf of the Appellant, relied upon the one ground, namely Ground 5, of the Appellant's Grounds of Appeal, explaining that this was a ground upon which permission had been granted, in that there was no reference at all by the judge to Article 8

considerations, although this was pleaded and relied upon in the skeleton argument. The Appellant had children. Moreover, the Appellant's bundle (at page 26) refers to the private life in the UK of the children.

7. Secondly, although permission had only been granted on this one particular ground, Mr Howard also wished to state that the determination of nationality was wrongly arrived at because there is well established case law that one begins with first looking at what the nationality of the parents was, because if the parents could be shown to be Eritrean, then it would follow that the children would also be Eritrean. In this case the Appellant's nationality had only assessed on the basis of what she said.

8. At this point, Mr McVeety interrupted to say that permission had not been granted on the nationality question, and had in fact been expressly rejected by the Tribunal granting permission, and that the only focus of this appeal should be on the issue of Article 8.

9. For his part, therefore, Mr McVeety dealt with the question of Article 8. He said that there is no doubt that Article 8 was not referred to. However, the error was not material. This is because the judge comprehensively rejected everything that the Appellant said about her claim (see paragraphs 30 to 50).

10. Second, although it is said that the Appellant's bundle itself referred to Article 8 considerations (at page 26), nevertheless there is no evidence here of what interests fell to be jeopardised if the Appellant was removed. There are no letters from the children's schools, no reference to potential risk upon return to their country, and no further evidence about why it would be disproportionate to expect the children to accompany their Appellant mother upon her removal from this country.

11. Third, although it is said that there was a reference to the skeleton argument, which did include mention of the Appellant's Article 8 rights, all this states is that "there will be significant obstacles", if the Appellant is returned to "Eritrea". Given that the claim that the Appellant was a national of Eritrea, to which she feared return, had been rejected, it could not be said that there would be significant obstacles to the Appellant being returned to Eritrea.

12. In reply, Mr Howard submitted that the Appellant's daughter was 6 years old at the time of the hearing back in June 2017. She was now 9 years of age. There had since been the birth of a second child, who was just over 2 years of age. These matters do now need further consideration. The Article 8 claim would be a tenable one to raise in these circumstances.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve 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 as follows. Notwithstanding Mr Howard's submissions to persuade me, I find that, although there is an error in the judge not referring to the Article 8 issues, it is not a material error. The judge states

earlier on in the determination (paragraph 3) that, "she further claimed that the UK would be in breach of its obligations under the European Convention on Human Rights if she were returned to Eritrea".

14. However, it is for the Appellant to explain why this is the case. The claim was simply not made out that removing the Appellant would breach her Article 8 rights. In this case, one assumes that these would be to "family and private life". This is only an assumption that one can make because all that is said before the judge, as she makes clear (at paragraph 3) is that removal from the UK "would be in breach of its obligations under the European Convention on Human Rights". This could just as well be a breach of Articles 2 and 3. In any event, the breach was alleged on the basis of her return to "Eritrea", which the judge rejected, because the judge rejected that the Appellant was from Eritrea as she claimed.

15. Second, the skeleton argument itself also only states that "there will be significant obstacles" without setting out what these are.

16. Third, insofar as permission was granted before this Tribunal on the question of Article 8, all that paragraph 5 of the grounds states is that "the FtT Judge has failed to give reasoning as to why there would not be very significant obstacles to the Appellant's return in the light of his (sic) particular circumstances. The FtT Judge has failed to make findings under Article 8 of the ECHR" (see paragraph 5.1 of the grounds). It is for the Appellant to explain exactly what findings need to be made in relation to Article 8. Nothing appears to have been raised at all. The very fact that there was the existence of the eldest child (because the youngest one had not been born then), at the age of 6 years, did not automatically mean that removal of the parent would lead to the infringement of the Article 8 rights of the child, given that it is well established that removal in such cases would be of the family unit as a whole.

17. Finally, as against that, the judge does give very extensive consideration to the nature of the claim and rejects it wholesale. She explains how the Appellant had been "singularly inconsistent in her accounts" (paragraph 35). She was inconsistent about her movements in Greece (paragraph 36). She claims that the older child was conceived as a result of her rape, but the judge stated that "this clearly cannot be so" given that the child's date of birth was 1st September 2009, but the Appellant had been in Greece in January 2007 (paragraph 37).

18. Thereafter, the Appellant claimed to have been confused in relation to other details (see paragraphs 38 to 40) but the judge rejected her explanations in this regard. The Appellant also blamed the interpreters (paragraph 42) but the judge was not persuaded. At the hearing before the judge the Appellant's "lack of plausibility in this claim was reinforced when in oral evidence she gave two conflicting statements ..." (paragraph 43).

19. The judge was not satisfied that the Appellant made a genuine effort to find her from the Ethiopian Embassy whether she was an Ethiopian national or not (paragraph 50).

Notice of Decision

20. The decision of the First-tier Tribunal did not amount to an error of law. The decision shall stand.

21. An anonymity direction is made.

22. 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 her or any member of her 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
Deputy Upper Tribunal Judge Juss	10th September 2019