



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-003611**  
**First-tier Tribunal No:**  
**PA/55230/2021**  
**IA/15798/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 29 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**SM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms E Stuart-King, Counsel instructed by JD Spicer Zeb  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Heard at Field House on 21 February 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Groom, promulgated on 4 July 2022, dismissing her appeal against a decision of the respondent made on 18 October 2021 to refuse her asylum and protection claim.

2. The appellant's case is that she is a citizen of Eritrea and is at risk on return there on account of her father's political opinions; or, that she would be killed or forced into potentially endless military service as she left illegally.
3. The Secretary of State does not accept that the appellant is a citizen of Eritrea and rejected her claim that she had a well-founded fear of persecution there. The respondent's case is that she can be returned to Ethiopia where she would not be at risk.
4. The judge heard evidence from the appellant and from an additional witness, SG. She also heard submissions from representatives for both parties. In addition, the judge had before her bundles prepared by both parties, the appellant's skeleton argument and response.
5. The judge noted that the appellant was undocumented and had provided no other documentary evidence or photographic evidence in relation to any member of her family which demonstrates that she is a national of Eritrea or evidence of her time spent there [42]. The judge found:-
  - (i) SG's oral evidence that he and the appellant used to play together was inconsistent if the appellant was kept indoors for the majority of her time as she claimed. It was implausible that the appellant would have such limited memories of the area in which she originated [45];
  - (ii) the appellant gave vague information regarding the political situation in Eritrea and her father's political involvement and claimed killing;
  - (iii) whilst the appellant had taken photographs of herself outside of the Eritrean Embassy no evidence had been adduced from that embassy which is capable of demonstrating she is a national of that country;
  - (iv) the appellant's credibility had been undermined in accordance with Section 8 of the 2004 Act with a failure to claim asylum en route to the United Kingdom;
  - (v) the appellant's evidence was vague and lacking in detail and there are inconsistencies between the appellant's version of events and those given by SG, in particular that he and the appellant used to play outside in Assab.
6. On the basis the judge found the appellant was not a national of Eritrea and that appeal fell to be dismissed.

### **Grounds of Appeal**

7. The appellant sought permission to appeal on the grounds that:
  - (i) the judge had erred in rejecting the evidence of the witness, drawing on inconsistencies which were not in fact supported by the evidence and/or arose from a misunderstanding of the evidence;
  - (ii) the judge failed to take into account the appellant's age and the relatively short length of time she had lived in Eritrea in assessing why her knowledge of the area was limited; and
  - (iii) the same factors vitiated the findings in respect of the appellant's account of her father's political involvement.

8. In addition, for the reasons as set out below, the grounds were amended at the hearing to permit a challenge on the basis that the judge had failed to consider that the appellant's account of what had happened to her and her family and the journey from when they were expelled from Ethiopia was confirmed insignificant aspects by a report from Human Rights Watch in the appellant's bundle.

### **The Hearing**

9. Ms Stuart-King sought permission to adduce the note of the hearing produced by Counsel who had represented the appellant before the First-tier Tribunal; she also sought to amend the grounds as detailed above.
10. Mr Avery explained that he was not put in any difficulties by either and I was satisfied that it was in the interests of justice to permit the grounds to be amended.

### **Consideration of the grounds**

11. I bear in mind that an appellate court should be reticent in setting aside the findings of fact made by a judge who had the benefit of hearing and seeing the witnesses give evidence. There must be a good reason to set aside such findings, and findings as to credibility.

#### Ground 1

12. It is correct that the appellant did not adduce evidence of the medical condition which caused her mother to keep her at home. She does, however, in her witness statement say that it was from an epilepsy from which she has been cured. The inconsistency in SG's evidence on which the judge relies is set out in two different ways. At paragraph 45 the judge says he was inconsistent if they had played together as the appellant was kept indoors and at paragraph 49 the judge states "there are inconsistencies between the appellant's version of events and those given by SG, in particular that he and the appellant used to play outside in Assab".
13. I do not have a transcript of the hearing but I do note that both witnesses gave evidence through interpreters. The note from Counsel does not indicate that SG's evidence was that they played outside. Absent that point it is difficult to see how there was any inconsistency in their evidence and no further inconsistencies are identified at [49].
14. That said, however, it must be borne in mind also that SG was born in 1992. Until they met again in the United Kingdom he had last seen the appellant in 2001. That he is able to recall her from having played with her as neighbours both in Addis Ababa and in Assab is unremarkable but he is unable to confirm her account as a direct witness. At best, he confirms the movement from Addis Ababa to Assab but, viewing the evidence as a whole, the judge was entitled to attach little weight to his evidence as confirming the appellant's nationality.

#### Ground 2

15. I accept, as Mr Avery submitted, that the judge was clearly aware of the appellant's age at relevant times. That is evident from, for example paragraph 43 of the decision and at paragraph 45. The judge does not, however, indicate expressly that she took that into account in assessing what she would have expected the appellant to know. That is also relevant when the judge makes

findings about what she would have expected the appellant to have remembered about Assab as the area from which she originated. As Ms Stuart-King submitted, the appellant was only 3 when she left Assab for the first time, was absent for a period of some eight years and lived there again for just over a year until the age of 12. As an aside, I note the appellant's evidence in her witness statement that she did not go out much. It is of note also that she said [10] she did not go to school.

16. The judge records also [46] that the appellant gave vague information regarding the political situation in Eritrea and her father's political involvement and claimed killing. Again, it is unclear whether this was taken as a negative point but equally it is unclear whether the judge took into account the appellant's age at the time and what she would have known.

### Ground 3

17. I accept that in her witness statement setting out the basis of claim at [10] to [12] the appellant has given details about what happened in 1990 to her parents, that they had voted in the 1993 referendum [11] and details her trip when deported from Ethiopia to Eritrea [12]. This is significantly detailed and, as submitted by Ms Stuart-King, is closely mirrored in the Human Rights Watch Report which appears in the bundle. It is, however, remarkable that the appellant appears to have been able to recall such details as that in 1993 (when she was aged 5) her parents voted in the Eritrean referendum or whether they were issued with Eritrean ID after that point. She appears also to have recalled that her father was given a certificate that confirms they were deported from Ethiopia [12].
18. That said, the appellant has given significant details about what happened in 2001 when soldiers came to the house looking for her father. It is, however, difficult to say that that is a vague recollection given the lapse of time and the appellant's age at the time.
19. I remind myself that it is only in rare circumstances that an Appellate Tribunal should set aside findings of fact reached by a First-tier Tribunal, particularly those relating to credibility, where that Tribunal had the benefit of hearing and seeing the witnesses giving evidence.
20. The evidence from SG is capable only of confirming the appellant's presence in Addis Ababa and then again in Assab but it does not confirm any more of the appellant's account. It does not confirm what happened to her after 2001 and it is evident from her witness statement at [17] that she returned to Ethiopia. She met and married her husband there and in that context SG's evidence does not assist to a great extent concerns with the appellant's nationality regarding large parts of the appellant's account.
21. Accordingly, I am not persuaded that in this context that any error in misrecording of the evidence such that SG's evidence was discounted is capable of being material.
22. It is sufficiently clear from the decision that the judge was aware of the appellant's age and it is permissible for the judge in the circumstances to have concluded as she did at [45] that the appellant's knowledge of the area from which she originated would be greater. That was an observation given to the judge which is permissible.

23. It is unclear that the judge attached negative weight to the lack of information regarding the political situation in Eritrea and the father's political movement and no challenge has been made to the judge drawing adverse inferences to the appellant's credibility from her failure to claim asylum in Italy and France.
24. Accordingly, for these reasons I am not satisfied that the grounds are made out. The judge's conclusions as to the appellant's credibility are sufficiently detailed and sustainable, as was her conclusion that the appellant is not Eritrean. Accordingly, I am satisfied the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 21 March 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal  
Immigration and Asylum Chamber