



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

Case No: UI-2023-003265

First-Tier Tribunal No: PA/51456/2022  
IA/03937/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 12<sup>th</sup> March 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**ALMAS TORINO SANTON  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Mair, instructed by Fisher Stone Solicitors.  
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 19 February 2024**

**DECISION AND REASONS**

1. In a determination promulgated on 12 December 2023 the Upper Tribunal found material error of law in the decision of the judge of the First-tier Tribunal and set that decision aside.
2. The Tribunal is grateful to the parties for the constructive manner in which they have approached the outstanding issues. That process was assisted by the filing of skeleton arguments in accordance with directions given in the error of law hearing which identified the points requiring further consideration.
3. The appellant remains unwell and unable to participate in the appeal which proceeded by way of discussion and submissions only.
4. The primary issue in the appeal related to the appellant's nationality. The appellant claimed to be an Eritrea national which was disputed by the Secretary of State.
5. Two additional pieces of evidence have been provided that were considered relevant to determining nationality. The first is DNA test results establishing the relationship between the appellant and an individual who is her half brother. The second, that person's recognition by the immigration authorities in France as

being a person entitled to a grant of refugee status on the basis of his Eritrean nationality and personal circumstances when compared to country conditions.

6. The Secretary of State in his skeleton argument specifically commented upon the fact that just because the French authorities had recognised the half brother as an Eritrean national that did not mean the UK authorities were required to accept the appellant was, or that it was determinative of the question of whether the appellant is an Eritrean national.
7. The authorities in France granted refugee status to the half brother, a relationship which was not challenged before me following the DNA test results. One can understand the initial argument put forward by the Secretary of State as national authorities will often grant status to an individual if satisfied their claim is true without a detailed examination of the personal circumstances or testing in a court of law of the claim being made.
8. In this case, however, further evidence has been produced. It appears the authorities in France initially refused the half-brother's application for refugee status, a decision against which he appealed. Ms Mair was able to produce a copy of the judgement of the immigration appeal tribunal in France, accompanied by an English translation, indicating that the half-brothers claims had been tested, and that while some elements of the claim were not accepted by the French tribunal, they did accept that the half-brothers had established he is an Eritrean national and entitled to refugee status.
9. Other concerns about the evidence of the half brother, whose witness statement confirmed the appellant's contention regarding the familial relationship and family history, were addressed by an addendum country expert report which has also been considered.
10. In relation to the question of the appellant's nationality, I am satisfied having considered the evidence as a whole, including the evidence not previously available, that the appellant has discharged the burden of proof upon her to the required standard to show that she is a national of Eritrea, the country of her birth. There is nothing to show she acquired Ethiopian nationality or has any legal right to live there.
11. It was accepted in the skeleton argument of the Secretary of State that if the appellant is found to be a national of Eritrea she is entitled to a grant of international protection as a refugee.
12. The secondary issue outstanding was whether the appellant was entitled to a grant of leave pursuant to Article 3 ECHR on the basis of her medical needs (mental health). I advised the parties at the hearing that in light of the appeal being allowed on the first issue, that of entitlement to international protection, I did not need to consider this matter further. That approach was not challenged meaning I need say nothing further about the appellant's situation.
13. The First-tier Tribunal's finding the appellant is entitled to leave pursuant to Article 8 ECHR is preserved in the error of law finding but has been overtaken by my finding set out above.

### **Notice of Decision**

14. Appeal allowed pursuant to the Refugee Convention.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**20 February 2024**