



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05086/2014**

THE IMMIGRATION ACTS

**Heard at Columbus House,
Newport
On 22 October 2015**

**Decision and Reasons
Promulgated
On 25 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

**RA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Simmonds, Duncan Lewis Solicitors

For the Respondent: Mr Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is an Eritrean national. The Respondent refused her application for asylum and humanitarian protection in a letter dated 11 July 2014. The Respondent also concluded that her removal would not breach her right to respect for family and private life under Article 8 of the European Convention on Human Rights (ECHR) both under the Immigration Rules and outside the Rules on the basis of exceptional

circumstances. The Respondent made a decision to remove her as an illegal entrant under section 10 of the Immigration and Asylum Act 1999.

2. The Appellant appealed against that decision. First-tier Tribunal Judge Osborne dismissed her appeal. He found that she would not be at risk of persecution on return to Eritrea and that Article 3 would not be breached. He also considered Article 8 ECHR and concluded that her removal would be proportionate.
3. The Appellant sought permission to appeal against that decision. Permission was refused by First-tier Tribunal Judge Pooler but granted on renewal by Upper Tribunal Judge Kebede on 29 May 2015. She found that there was no merit in the argument that the Appellant would be at risk on return to Eritrea but found it arguable that the First-tier Tribunal failed to give proper consideration to, and make adequate findings on, the provisions of paragraph 276ADE (1) (vi) in the light of the Appellant's history and connections to Eritrea.

The Grounds

4. Ground 1 argues that the First-tier Tribunal Judge misdirected himself in law and did not properly consider the case of **MO (Illegal exit - risk on return) Eritrea** CG [2011] UKUT 00190.
5. Ground 2 argues that the First-tier Tribunal Judge misdirected himself in law in relation to paragraph 276 ADE (1) (vi) of the Immigration Rules. It is submitted that given the national language of Eritrea is Tigrinya, a language that the Appellant could only speak at a basic level and that the Appellant had not lived in Eritrea since the age of five, there would be very significant obstacles to the Appellant's integration in Eritrea. It is argued that having found that the Appellant was a national of Eritrea, had not lived there since the age of five, that her family were not in Eritrea and that she spoke Amharic, it was perverse that the First-tier Tribunal Judge then went on to conclude that the Appellant could not meet the requirements of paragraph 276 ADE (1) (vi).

The Rule 24 Response

6. The Respondent submits that the First-tier Tribunal Judge directed himself appropriately and that the Appellant used to live in an area of Eritrea where Amharic was spoken. Further, she appeared to be capable in Arabic. In the circumstances it was open to the Judge to conclude that she fell outside the provisions of paragraph 276 ADE (1) (vi).

The Hearing

7. Mr Simmonds accepted that permission to appeal was granted only in relation to the ground that the First-tier Tribunal failed to give proper consideration to paragraph 276 (1) ADE (vi). He relied on the grounds of appeal submitted to the Upper Tribunal. He submitted that there was no reason given in the decision of the First-tier Tribunal as to why the

Appellant did not meet the requirements of paragraph 279ADE (1) (vi). Amharic was spoken in Eritrea but it was not a national language. The Judge made a finding of fact that she was an Eritrean national and no challenge had been brought against that finding. On the basis that it had been accepted that she had limited understanding of the languages the First-tier Tribunal either perversely found that she had not met the requirements or failed to give reasons why she did not meet the requirements.

8. I asked Mr Simmonds why, in view of the fact that paragraph 276 ADE was not relied on in the grounds of appeal, and was neither relied on in the skeleton argument nor in Counsel's submission to the First-tier Tribunal, the First-tier Tribunal could be said to have made an error of law in failing to consider it. Mr Simmonds submitted that the First-tier Tribunal Judge had directed himself to the relevant paragraph and it was "Robinson obvious" point.
9. Mr Richards submitted that the Judge was not invited to consider this part of the Rules and it could not be a material error of law not to deal with it. There was a reason why it was not raised on Counsel's skeleton argument, namely the absurdity of the argument. Her argument was that she was Eritrean and lots of people spoke Amharic in Eritrean. To then say that she could not go back there because she spoke Amharic was a ridiculous argument. She spoke Arabic. Had the Judge been invited to deal with 267ADE he would have given it short shrift and his failure to deal with it could not be a material error of law.
10. I reserved my decision. The parties agreed that if I found an error of law I should re-make the decision on the evidence before me.

Discussion and Findings

11. Permission to appeal was granted on limited grounds only. It is clear from grounds of appeal to the First-tier Tribunal that the Appellant did not rely on Article 8 ECHR. The Appellant's counsel before the First-tier Tribunal did not argue that Article 8 was engaged in his skeleton argument and it is clear from a perusal of the record of proceedings that he made no arguments either in relation to paragraph 276 ADE or Article 8 in submissions.
12. In **Sakar v SSHD** [2014] EWCA Civ 195 Moore-Bick, LJ at paragraph [13] held that where no evidence or argument was placed before the First-tier Tribunal in support of an Article 8 claim the tribunal was entitled to treat it as having been abandoned. In that case, Article 8 had been raised as a ground of appeal, whereas, in this case, on the evidence before me it was not. Arguably, therefore First-tier Tribunal Judge Osborne was under no duty to deal with Article 8.
13. In **GS (India) and Others v SSHD** [2015] EWCA Civ 40 Laws LJ held, in relation to an appeal from the Upper Tribunal, at paragraph [89]

“Generally, the UT will not make an error of law by failing to consider a point never put to it. That is not, however, an absolute rule. Sometimes new issues are (in the lamentable *patois* of the cases) “Robinson obvious”. The reference is to *Robinson v Secretary of State* [1998] QB 929, in which it was held at paragraph 39 that the appellate authorities

“are not required to engage in a search for new points. If there is readily discernible an obvious point of Convention law which favours the applicant although he has not taken it, then the special adjudicator should apply it in his favour, but he should feel under no obligation to prolong the hearing by asking the parties for submissions on points which they have not taken but which could be properly categorised as merely ‘arguable’ as opposed to ‘obvious’... When we refer to an obvious point we mean a point which has a strong prospect of success if it is argued. Nothing less will do.”

The *Robinson* hurdle is a high one: see my observations in *R (Khatoon) v ECO Islamabad & Anor* [2014] EWCA Civ 1327 at paragraph 21.”

14. As stated, no point in relation to paragraph 276 ADE (1) (vi) was argued before the First-tier Tribunal. It is clear that the burden of proof is on the Appellant and she was required to demonstrate, in order to meet the requirements of the Rule, that there would be very significant obstacles to her integration to Eritrea. It is argued on her behalf that the fact that she could only speak Tigrinya to a basic level would be a very significant obstacle to her integration. However, her case was that she spoke Amharic which is one of the languages spoken in Eritrea. I do not consider therefore that this is a “Robinson obvious” point. I also do not consider that the fact that she had not lived in Eritrea since the age of 5 years and had no family there involves an obvious point of Convention law. These points were arguable rather than obvious. In any event, despite the fact that Article 8 was neither raised as a ground of appeal nor argued, the Judge considered it and gave a fully reasoned decision finding that the Appellant’s removal was proportionate. He noted that the Appellant had only been in the UK since May 2014 which was less than a year before the hearing and that she and her child were healthy. The Appellant has not sought to impugn the Article 8 assessment outside the Rules. I find no error of law in the First-tier Tribunal’s decision.
15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision and the appeal is dismissed.

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date

Deputy Upper Tribunal Judge L J Murray