



IAC-BH-PMP-V1

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

Appeal Number: AA/10554/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 30th June 2015**

**Decision and Reasons Promulgated
On 24th July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**MAKDA ASGEDOM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Stevens, Legal Representative of Duncan Lewis Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

Background

2. On 23rd February 2015 Judge of the First-tier Tribunal Grant-Hutchison gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal J S Law in which he allowed the appeal on asylum grounds against the

decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, a female citizen of Eritrea.

3. The grounds of application contended that the judge failed to take into consideration factors which could have led to the conclusion that the appellant would not have been at risk on return for failing to complete military service or the fact that her uncle and father were freedom fighters which might have put the appellant in a limited exceptions category allowing her to leave the country illegally. The latter category is outlined in paragraph (iv) of *MO (Illegal exit – risk on return) Eritrea CG* [2011].
4. Judge Grant-Hutchison granted permission on the basis that the grounds of application were arguable. That was because the appellant might have been exempted from military service as a married woman who had completed six years of military service and because her father's activities might have meant she left the country legally.

Error on a Point of Law

5. Mr McVeety confirmed that the respondent relied on the grounds. He further submitted that the judge had found that the appellant left Eritrea illegally without consideration of her background as *MO* required.
6. Mr Stevens relied on the response dated 8th May 2015. In this it is argued that the guidance set out in *MO* enabled the judge to conclude that the appellant was at real risk of persecution on return to Eritrea. Any argument about her having completed national service, which was heavily disputed by the appellant, was irrelevant to whether or not she qualified for asylum. Further, if the appellant was a person who had left Eritrea illegally the fact that her late father was a freedom fighter should make no difference to risk as the appellant had not given important service to the Eritrean government herself. It is also pointed out that the appellant had provided compelling evidence in the form of photographs to show that she had undergone national service which she had been unable to avoid because of her family connections. Finally, it was contended that the decision was careful and balanced with the judge making both positive and negative findings which showed a critical analysis of the evidence.
7. Mr Stevens also drew my attention to the judge's reference in paragraph 13(i) of the decision to the issue of the appellant's military service and potential exemption from it. Nevertheless, Mr Stevens conceded that specific reasons were difficult to find for the judge's conclusions in paragraphs 22 and 23 that the appellant had left Eritrea illegally, particularly taking into consideration the issues raised by the respondent. Mr Stevens argued that any errors should not be seen as material.

Conclusions

8. After considering the matter for a few moments I announced that I was satisfied that the decision showed errors on points of law as claimed for the reasons which now follow.
9. The decision does not show that the judge grappled with the possibility that the appellant might have been demobilised from military service on the basis that she

was married and taking into consideration that she had already served six years. These were factors referred to in the COI Report of 18th September 2013 at paragraphs 9.51 and 9.52. The report was before the judge in the appellant's bundle submitted on 15th January 2015. Additionally, the judge makes no reference to the relevant point raised in the head note to *MO* at paragraph (iv) about military service exemption for those who were perceived as having given valuable service. That was an issue specifically referred to in paragraphs 51 and 52 of the respondent's reasons for refusal letter and therefore required to be dealt with. The judge's failure to give adequate consideration to the two relevant issues therefore amounts to a material error on a point of law such that the decision should be set aside.

10. Both representatives agreed that any re-making of the decision should take place before the First-tier Tribunal as fresh findings of fact would be necessary. This would accord with paragraph 7.2(b) of the Practice Statements for the Tribunal made by the Senior President on 25th September 2012.

DIRECTIONS

11. The appeal will be heard afresh before the First-tier Tribunal sitting at Stoke on 1st February 2016.
12. A Tigrinyan interpreter will be required for the First-tier hearing.
13. The hearing should not be before Judge of the First-tier Tribunal J S Law.

Signed

Date

Deputy Upper Tribunal Judge Garratt