



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

Appeal Number: AA/11037/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
on 1st July 2015**

**Decision and Reasons
Promulgated
On 6th July 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**H A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mr Mills - Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Parkes promulgated on the 12th February 2015 in which he dismissed the appellants appeal against the removal direction that accompanied the refusal of her claim for asylum or any other form of international protection.
2. The removal direction under challenge named both Ethiopia and Eritrea as the countries of destination. This is permissible. In *RR (refugee - safe*

third country) Syria [2010] UKUT 422 (IAC) the Tribunal held that in an asylum appeal in which the claimant has only one country of nationality (country A), it is permissible for the Secretary of State to propose more than one country of destination (country B etc): see also *JN (Cameroon) [2009] EWCA Civ 643 [23]*.

3. The appellant maintained she does not have Ethiopian nationality. The core of her claim is that she is a national of Eritrea born in 1994. She claimed to have lived in Campo Sudan, Assab with her parents. Her father was taken by the government and she removed to Sudan by her aunt. In Sudan she was put to work as a sex slave by her aunt, sleeping with policemen. Eventually she and her aunt were imprisoned, the appellant for three months and the aunt for two years. Following her release the appellant obtained money to pay an agent and left for Italy. She travelled from there to France and the UK where she claimed asylum.

Discussion

4. The judge considered the evidence made available in support of the claim but found the appellant lacked credibility. The core finding is at paragraph 22 where the judge finds:

“22. To the lower standard I find that the Appellant has not shown that she is either from Eritrea or that she is an Eritrean national. The inconsistencies in her account undermine her claim to have lived for any significant period in Eritrea or to be a national of that country. Also I do not accept her account of events in Sudan so far as the aunt is concerned or what she claims she was forced to do. I find that it is probable that the Appellant is a national of Ethiopia and that she is not at risk in her home country.”
5. The reasons for this conclusion are set-out in the other parts of the determination by reference to the language used by the Appellant which is that of Ethiopia, lack of use of the language of Eritrea, and inconsistencies and differences in the evidence. The judge clearly considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings, made which are arguably sustainable.
6. The grounds of challenge have to be read against the core finding that the appellant is Ethiopian and not Eritrean and has not proved any past connection with Eritrea.
7. Ground 1 asserting legal error as the judge failed to make a finding on the risk to the appellant on return to Eritrea has no arguable merit. As the judge found the appellant is Ethiopian this is the country to which she is to be returned, not Eritrea. No legal obligation has been made out to show Judge Parkes was required to consider risk on return to a country of which the appellant is not a national on a hypothetical basis.

8. Grounds 2 asserts legal error in the judge failing to assess the risk on return to Ethiopia. The judge does deal with this issue when he states the appellant is not at risk in her home country. This is a sustainable finding for as an Ethiopian national returning to Ethiopia neither the country evidence not that provided directly by the appellant establishes any arguable real risk to her on return.
9. The case of *ST [2011] UKUT 252* has not been shown not be applicable on the facts as found as the appellant is not an ethnic Eritrean.
10. Ground three claims the judge failed to give any reasoning for finding the appellant is an Ethiopian national in paragraph 22, but adequate reasons are given in other parts of the determination which have not been shown to be susceptible to challenge by way of legal error and which are drawn together in the conclusion in paragraph 22.
11. Ground four asserting inadequate reasoning has no arguable merit. A reader of the determination is able to understand the judge's findings and reasoning for all relevant issues. Such findings have not been shown to be perverse, irrational, or contrary to the evidence.
12. Ground 5 asserting a failure to consider *MO (Illegal exit-risk on return) Eritrea [2011] UKUT 190* is factually correct as it was not considered. This is not as a result of arguable legal error, however, but because the appellant was found to be Ethiopian. The country of return is therefore Ethiopia and not Eritrea.
13. Paragraph six challenges the conclusion in relation to paragraph 276ADE of the Immigration Rules but the burden is upon the appellant to prove her ability to qualify for leave under the Rules. In paragraph 24 the judge finds:

"24. The Appellant arrived in the UK at the end of 2013. She has spent relatively little time in the UK and does not speak much, if any English, there is no evidence that she cannot return to Ethiopia and there is evidence that she has relatives there. The Appellant cannot succeed under Appendix FM or paragraph 276ADE of the Immigration Rules. There are no compelling circumstances that would justify considering her situation outside the rules and I decline to do so."
14. Adequate reasons have been given for why the Appellant fails on this basis.
15. This is a case in which the core account relied upon was not found to be credible and in which the evidence supported a finding that the appellant is an Ethiopian national. On the basis of the sustainable findings no arguable legal error material to the decision to dismiss the appeal has been made out.

Decision

16. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.

Anonymity.

17. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 3rd July 2015