



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

Appeal Number: AA062582015

THE IMMIGRATION ACTS

Heard at Field House

On 11th May 2016

**Decision & Reasons
Promulgated
On 9th June 2016**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**BBH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Knight, Legal Representative, Duncan Lewis & Co Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a decision by Judge of the First-tier Tribunal Rowlands, who in a decision promulgated on 22nd October 2015, dismissed the Appellant's appeal against a decision of the Secretary of State dated 25th March 2015 to refuse to grant her asylum and to remove her from the

United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999.

Background

2. The Appellant is a citizen of Ethiopia. Her date of birth is [] 1983. Her asylum claim revolves around her alleged detention in Ethiopia and her subsequent alleged involvement with a political party that is either banned or of adverse attention to the Ethiopian authorities.
3. The following is a summary of the Appellant's claim. She worked as a singer in Ethiopia. From 2001 she was a singer in the Ethiopian army. She eventually became part of the army despite having no such wish. She witnessed discrimination in the army based on ethnic origin and, to some limited extent, experienced discrimination as an individual who is half Amhara and half Oromo. She eventually notified the army that she was leaving. This would have been around September 2005. She subsequently carried on working as a singer in Ethiopia and even managed to leave the country to undertake a singing job in the Middle East.
4. When she went to the airport to undertake a further singing job in September 2008 she was detained on the basis that she had committed treason or had sought to leave the country illegally in contravention of an order made, unknown to her, in October 2006. She was sentenced to one year in prison but served only eight months. During her time in prison she was subjected to serious ill-treatment and was raped. As a result she bore a child.
5. After her release the Appellant became involved in an organisation called Tinsae Ethiopian Patriots Union, or TEPU. She became a member in October 2010, attended meetings, contributed money and secretly distributed leaflets. She also continued singing both inside and outside Ethiopia. She first entered the United Kingdom in March 2013 as a Tier 5 temporary worker under the Points-Based System enabling her to sing in an Ethiopian restaurant. She returned to Ethiopia in August 2013. Sometime between then and October 2013, when she next entered the UK, she made a CD with songs designed to ferment rebellion against the Ethiopian authorities. This CD was to be distributed after she left the country.
6. The Appellant made a further application to enter the UK in September 2013, again as a Tier 5 worker. She was granted entry clearance valid until 23rd December 2013. On that day, on her way to the airport, the Appellant was telephoned by her brother. She was informed that their father had been arrested and that the authorities were searching for her. The authorities had arrested other members of the TEPU and the CDs had been discovered and confiscated. She claimed asylum on 13th February 2014. She claims to have continued to support Tinsae through teleconferencing and 'Partalk', and through another organisation called the Ethiopian

National Transitional Council, or ENTC, in respect of which her ex-partner was either Chair or Vice President of the UK chapter.

7. The Appellant has a son born in the UK on 16th October 2014. The father of the child, who was her partner, is either settled or a British citizen. The child is therefore a British citizen.
8. In her decision of 25 March 2015 the Secretary of State did not believe the Appellant's account and refused her protection claim. An appeal against this decision was heard on 23rd September 2015. The First-tier Tribunal Judge did not find the Appellant credible and gave his reasons in paragraphs 37 to 41 of his decision.

Grounds of appeal to the Upper Tribunal

9. The Appellant sought permission to appeal to the Upper Tribunal and was at that time without legal representation because her previous solicitors had been the subject of a Law Society intervention. In granting permission to appeal Upper Tribunal Judge Kopieczek stated in material part:

“Although the First-tier Judge did not explain why he had decided that it was ‘inappropriate’ for the appeal to be adjourned the basis for the application was so that further evidence of the nationality of the Appellant’s daughter [this should be son] could be obtained. The judge’s conclusions in relation to Article 8 however, take into account the scenario whereby it is assumed that her child is a British citizen.”

The decision continues:

“One of the matters that the First-tier Judge took into account against the Appellant is the apparent inconsistency in relation to the political group that she claimed to have been a member of, being described as TEPU. The judge referred to the Appellant as having originally said in interview that she was a member of an organisation called the ERPU (the acronym being given in the refusal letter at paragraph 35). What the judge did not make clear at paragraph 40 is that it was in fact in the screening interview at 4.2 that she is recorded as having said that she was a member of the Ethiopian Renaissance Patriotic Union, which the Appellant says in the grounds was a misinterpretation. In the asylum interview at question 65 she said that she was a member of Tinsae Ethiopia, described in the refusal letter at paragraph 35 as the Tinsae Ethiopian Patriots Union. The two names, not the acronyms, are arguably not dissimilar.

In addition, after the screening interview, on 21st February 2014 the Appellant’s solicitors wrote to the respondent clarifying what was said in the screening interview as to the name of the organisation, before the refusal letter which is dated 25th March 2015. That clarification is not referred to in the determination.

The First-tier Judge stated that not knowing the name of the organisation that she belonged to ‘totally undermines her claim’. It is arguable that in

coming to the view that he did about the Appellant's knowledge of the name of the organisation the First-tier Judge erred in law.

The judge gave a variety of reasons for rejecting the credibility of the Appellant's claim and it may be that the issue of the name of the organisation is therefore not material to the outcome. Nevertheless, I grant permission for the reasons given above.

The grounds make various other complaints about the judge's findings and it could be said that these are mere disagreements with the judge's findings. Nevertheless, I do not limit the grounds that may be argued."

The Upper Tribunal hearing

10. At the outset of the hearing I provided to both representatives a document that I had obtained from the Internet relating to Tinsae Ethiopia. This was virtually identical to a document that had already been provided by the Appellant in her First-tier Tribunal bundle at page 115.
11. I applied Google Translate to that same document in respect of the Amharic lettering that had not been translated. This translated the word 'Tinsae' as 'resurrection'. I gave both representatives an opportunity to consider this document and the translation obtained from the Internet and I gave both representatives an opportunity to make any submissions or application that they considered appropriate, including the use of Google Translate' and its reliability. Having been given adequate time to consider the documents there was no application to adjourn by either representative, and no application to prevent the documents being admitted. I proceeded with the hearing.
12. I additionally provided both representatives with a copy of the Home Office Immigration Directorate Instruction (IDI) entitled "Family Migration: Appendix FM Section 1.0b Family Life (as a Partner or Parent) and Private Life: 10-Year Routes". This was published in August 2015 and was current at the date of the First-tier Tribunal appeal hearing. I provided this because the First-tier Judge did consider the possibility of the Appellant's son being a British citizen but concluded, giving reasons, that it was reasonable for the son to leave the UK and, in effect, leave the EU. The issue of reasonableness has to be considered in the context of the instructions and guidance issued by the Secretary of State as such guidance identifies the Respondent's own view of what action is reasonable. It is therefore relevant to the assessment of proportionality under Article 8 and whether the First-tier Tribunal took full account all relevant considerations in his assessment of reasonableness.

Discussion

13. I will deal first with the issue of the alleged mistranslation of the political group. In her screening interview at 4.2 the Appellant said that she had

been involved with the Ethiopian Renaissance Patriotic Union. She did not give any acronym for the group.

14. In a solicitors' letter sent on 21st February 2014 - after the interview, the solicitors stated that the Appellant had in fact been involved with the Tinsae Ethiopian Patriotic Union. The refusal letter made reference to the solicitors' letter of 24th February 2014 but concluded that the inconsistency was a proper basis upon which to draw an adverse inference against the Appellant as she would have known the name of the political group if she was genuinely involved with it. I note that this inconsistency was never put to the Appellant in her asylum interview, nor does the Appellant appear to have been asked any questions in relation to this in cross-examination during the First-tier Tribunal hearing.
15. The judge made no reference to the solicitors' letter or to the explanation provided by the Appellant that the inconsistency was the result of a misunderstanding or mistranslation. In her screening interview the Appellant used the word 'renaissance' when giving the name of the group. According to Google Translate 'Tinsae' means 'resurrection'. The similarity between 'resurrection' and 'renaissance' is, in my judgement, striking. This supports the Appellant's assertion that the word 'Tinsae' could have been translated by the interpreter at her screening interview as 'renaissance'. Although the judge did not have the benefit of any translation of the word 'Tinsae' he did not engage with the explanation offered by the Appellant at all. The judge was obliged to do so. I am satisfied that this constituted an error of law. The question remains whether it is material.
16. Ms Isherwood invited me to find that this inconsistency was one reason given by the judge in his overall credibility assessment and that it was not material having regard to the totality of his findings. I must therefore consider whether the judge's other findings were sufficiently comprehensive so as to exclude the possibility that he could have come to a different conclusion had he not failed to engage with the Appellant's explanation.
17. At paragraph 37 of his decision the judge draws an adverse inference against the Appellant because she had been able to leave the country following her voluntary departure from the army and because nothing had been done to enforce her return to the army other than the sending of some letters. The judge was not therefore satisfied that the Appellant had been detained for failing to return to the army or leaving the country. I am satisfied, for the reasons he gave, that the judge was entitled to that conclusion.
18. At paragraph 38 the judge draws an adverse inference on the basis that the Appellant produced a CD with her face on the cover which had been generated after she left Ethiopia. The judge stated:

“I am not satisfied that the document that she has produced is reliable. On her own admission she has produced evidence in the form of a CD cover with her picture on it to fit her claim and I am satisfied that this undermines any documents she produces.”

19. I am concerned with the judge’s concluding remarks. Whilst the judge was entitled to draw an adverse inference in the absence of any evidence of the CD’s distribution and the fact that the Appellant’s photograph had been put on the CD after she entered the country, this does not necessarily undermine the reliability of other documents produced by the Appellant. It is of course a factor for the judge to take into account in assessing what weight to attach to other documents but the judge cannot automatically exclude the possibility that other documents may be reliable without particularised consideration of those documents.
20. At paragraph 39 the judge stated: “As she was also inconsistent in what she said about what she had been charged with and why it was not proceeded with also undermines her claim. [sic]” I am concerned with the brevity of this finding. The judge can only have been referring to submissions made by the Respondent that appear at paragraph 26 of the determination. These submissions are to the effect that the Appellant had been inconsistent, “... about the reasons given for her detention. At one point suggesting that it was for ‘high treason’ and then claiming that it was for trying to leave the country without permission and ‘getting pregnant’.” The judge, however, misquotes the Appellant’s evidence and the Secretary of State’s refusal letter. At no stage did the Appellant ever claim that she had been detained for getting pregnant.
21. The Appellant maintains that she had been arrested for (i) treason (this is the explanation given in her screening interview) and (ii) for trying to leave the country when she was not entitled to do so (this is the explanation given in her substantive interview). The two are not necessarily inconsistent but I am nevertheless satisfied that the judge was entitled to find that there was an inconsistency and to draw an adverse inference.
22. It is not clear what the judge means when he says “it was not proceeded with” at paragraph 39. The Appellant, on her evidence, was detained, prosecuted and served time in a prison. The Secretary of State claims that there is inconsistent evidence from the Appellant as to the circumstances by which she came to be released. In her screening interview the Appellant said she was released with a warning and in her substantive interview the Appellant said she believed she was released because she became pregnant. In the refusal letter the Secretary of State claims that this is an inconsistency. This, however, fails to take into account what the Appellant said at question 135 of her interview where she indicated that she was ‘warned’ not to get involved in any political activities. I am not consequently satisfied that the Secretary of State or the judge were entitled to conclude that there was an inconsistency in the Appellant’s account.

23. At paragraph 41 the judge then draws an adverse inference in relation to the CD based on the absence of any evidence of its in circulation in Ethiopia. One must wonder what evidence the Appellant could reasonably have provided to show that an unlawful CD was in circulation in Ethiopia. I am nevertheless prepared to find that the judge was entitled to draw an adverse inference for the reasons he gave.
24. Returning to paragraph 40, I have already dealt with the judge's consideration of the name of the organisation in respect of which the Appellant claimed to be a member. It is clear that the judge attached significant weight to this, stating that this 'totally undermines her claim'. The judge did go on to give further reasons for rejecting the Appellant's involvement with TEPU, noting that a letter allegedly provided by the organisation had not been signed, was unaddressed and did not come from a specific person. These are valid reasons and the judge was entitled to attach little weight to the letter.
25. The judge then comments on the letter's failure to explain how the UK section of the organisation could possibly have information about the Appellant's activities. The Appellant does not however claim that the letter was issued by a UK section of the organisation. The Appellant's evidence was that it was received by email from the organisation which was based either Ethiopia or on the border with Ethiopia. In any event, the judge draws an adverse inference based on the assumption that the organisation would not have known about the Appellant's activities if they were conducted in secret. The Appellant's evidence was that she was a cell member of a small unit who kept the activities that were undertaken very secretive. There was however little probative enquiry by the Respondent or the judge as to what was meant by 'secret'. It was entirely unclear whether the Appellant's description in her asylum interview of her activities being 'secret' meant that they were secret within the organisation itself or whether they were secretive only to those outside of the organisation. I therefore have concerns as to the basis upon which the judge drew this adverse inference.
26. In light of the above assessment I am persuaded that the Judge's failure to engage with the explanation provided by the Appellant for giving a different name for the organisation in her screening interview could have made a material difference to his ultimate conclusions. The other credibility findings are not, in my view, so watertight and compelling as to exclude the real possibility that a contrary conclusion could have been reached.
27. Quite independently of the above considerations, I have additional concerns relating to the judge's assessment of the reasonableness of the Appellant's British citizen child leaving the UK. At paragraph 47 the judge did give reasons why, in his view, it would be reasonable for the child to leave the UK. He noted that the child was very young and would be going

to a country where his mother was a national. It was said that the child would have no concept of what country he was in at all and had siblings in Ethiopia.

28. It is not in dispute that the child's father did not attend the hearing and no cogent explanation was provided for that non-attendance. There was however a statement from the father and some evidence that the father maintained a relationship with the child. The possibility of the child's relationship with his father being disrupted was simply not considered in the decision.
29. More fundamentally, the judge did not take into account the IDIs on family migration to which I have already referred. This is perhaps not surprising given that no reference was made to it during the hearing by either party. It is however a well-known document and one in which the Secretary of State has considered the circumstances in which the parent of a British citizen child could be reasonably required to leave the UK. The Secretary of State's stated position is relevant to the Judge's own proportionality assessment because she is custodian of the public interest and her identification of what is reasonable in the public interest must be given weight. I am not satisfied that, had the judge considered this guidance and the Respondent's stated position, that his assessment of reasonableness would inevitably have been the same.
30. For these two entirely independent reasons I am satisfied that the First-tier Tribunal decision is marred by material errors of law. The matter will be remitted back to the First-tier Tribunal before a judge other than Judge Rowlands. This is because the credibility findings will need to be revisited and because there has now been a change of circumstances in that the Appellant is now reconciled with the father of her child and that relationship would need to be considered afresh.

Notice of Decision

The First-tier Tribunal decision is marred by a material error of law.

The appeal will be remitted back to the First-tier Tribunal, to be heard afresh by a judge other than Judge Rowlands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in cursive script, appearing to read 'Blum'.

Signed

8 June 2016
Date

Upper Tribunal Judge Blum