



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/09723/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

**Determination
Promulgated**

On 21 July 2016

On 22 July 2016

Prepared on 21 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**R. M.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, counsel, instructed by Halliday
Reeves Law Firm

For the Respondent: Ms Petterson, Home Office Presenting
Officer

DECISION AND REASONS

1. The Appellant entered the United Kingdom illegally and claimed asylum on 20 December 2014. That application was refused on 3 June 2015, and a decision to remove her from the UK was made in consequence.

2. The Appellant's appeal to the Tribunal against those immigration decisions was heard on 8 March 2016, and it was dismissed on all grounds by decision of Judge Hands, promulgated on 30 March 2016.
3. The Appellant's application to the First Tier Tribunal for permission to appeal argued that the Judge had accepted that the Appellant was married, and that she would be able to claim the married woman's exemption from national/military service, and that she had left Eritrea illegally. In consequence it was argued that the Judge had failed to correctly apply the guidance contained in the country guidance decision of MO (illegal exit – risk on return) Eritrea CG [2011] UKUT 190. That application was granted by Judge Pedro on 25 April 2016.
4. The Respondent filed a Rule 24 Notice dated 11 May 2016 in which she argued that the Judge had directed herself appropriately.
5. Thus the matter comes before me.

Error of Law?

6. In making the immigration decisions under appeal the Respondent had formally conceded that the Appellant was an Eritrean citizen as claimed, and had not placed in issue the Appellant's claimed identity or date of birth.
7. As such the Appellant would have attained the age of 18 in July 2011. She did not claim to have been called for national/military service at that point, or subsequently, and so she did not claim to be a draft evader, or a deserter.
8. The Appellant's case, which the Judge accepted, was that she had undertaken a ceremony of marriage in October 2013, at the age of 20. As the country guidance cases record, she would thereafter have been entitled to the married woman's exemption from national/military service in Eritrea, as the Judge appears to have accepted. Thus the Judge concluded that upon return to Eritrea the Appellant would not be required to serve national/military service because she would be able to establish her entitlement to the married woman's exemption.
9. The Appellant's case was that she had left Eritrea illegally, and given her age, this was a claim which was consistent with the guidance to be found in the country guidance cases as to the position prevailing in Eritrea up to and including 2011, notwithstanding her marriage. The Judge accepted that she had done so, and in my judgement the Judge must be taken to have implicitly accepted that upon return to Eritrea the Appellant would

be perceived as having done so. The Judge made no finding in the light of MO that the Appellant's health history, or level of education, meant that an inference could be safely drawn to the effect that she had been able to obtain a lawful exit visa.

10. Again, although the Judge did not deal with it expressly, I am satisfied that it is an inescapable conclusion of a forced return from the UK that the Appellant would be likely to be perceived by the Eritrean authorities upon return as a failed asylum seeker.
11. In the light of the guidance to be found in MO the finding of primary fact concerning the Appellant's illegal exit from Eritrea was sufficient, of itself, for the Appellant to establish that she was likely to be regarded with serious hostility by the Eritrean authorities upon her return to that country. The Judge did not engage with this, and nor did she go on to analyse the evidence before her to ascertain whether she was satisfied that there had been a sufficiently significant and durable change of attitude on the part of the Eritrean authorities to permit her to depart from that country guidance. Before me both parties were agreed that this amounted to a material error of law, which required me to set aside the decision upon the asylum and Article 3 appeals.
12. Following a discussion about whether the appeal should simply be remitted to the First Tier Tribunal for rehearing, it was confirmed by both parties that there were no relevant issues of primary fact that needed to be made; the Judge had indeed dealt with them all expressly, or by implication. Thus, both parties were agreed that I should proceed to remake the decision upon the asylum and Article 3 appeals myself, and that I did not need to hear any evidence to do so.

The decision remade

13. Although this material was placed before the Judge, the Respondent no longer relies upon the Country Information reports of September 2015; Illegal Exit, and, National (inc Military) Service, which was withdrawn on 20 May 2016. The Respondent relied before, and continues to rely, upon the Danish FFM report of 2014, and thus the Tribunal is invited not to follow the guidance in MO. No submissions were made to me upon the content of the Independent Advisory Group report of 13 May 2015.
14. The evidence does not establish that the Appellant held any political views in Eritrea, or that she has made any attempt to express political views opposed to the

Eritrean regime either within Eritrea, or, since she has left that country.

15. I have had regard to the country guidance case of MO, in assessing the weight to give to the evidence before me. I have also considered the Danish FFM report of December 2014 “Eritrea - drivers and root causes of emigration, national service and the possibility of return”, and an EASO (European asylum Support Office) report of 4 June 2015. Embassy letters were considered in MO, but plainly the Danish report is based upon much more recent information.
16. I have considered the bundle of reports that are relied upon by the Appellant offering criticisms of that Danish report from a wide range of authors. Much (although not all by any means) of that criticism is dependent upon Professor Kibreab’s own criticisms of the way the information he provided to the Danish FFM has been handled. Thus I have regard to the statement published by Professor Kibreab on the internet of 25 March 2015 which offers his own criticisms of the former Country Information reports of March 2015. The FFM contains the exchanges between the Danish FFM authors and Professor Kibreab leading up to publication of the FFM report, the occasions upon which he agreed notes of meetings and conversations held with him, and the occasions upon which he failed to respond to requests to do so, culminating in his email of 25 November 2014 to the Danish authorities congratulating them on a well written informative report, which together evidence their claim that it was only on 28 November 2014 following its wider publication that Professor Kibreab sought to distance himself from the FFM report.
17. For the avoidance of any doubt, I am not satisfied that there is clear and cogent evidence before me to the effect that the Danish authorities have withdrawn their own FFM report.
18. It seems to me clear that there is a wide ranging dispute over the reliability of the Danish FFM report of December 2014. That dispute has now been taken up by the Report by the Independent Advisory Group on Country Information Reports dated 13 May 2015. The Respondent has not sought to respond to that dispute to explain why the criticisms of the Danish FFM report are ill founded.
19. In the circumstances I am not persuaded that I should cease to place weight upon the country guidance decision in MO. I am not satisfied that the Respondent has established with cogent and reliable evidence that the situation in Eritrea has shifted so dramatically since

its promulgation in May 2011, that such guidance has been overtaken by subsequent evidence.

20. In the circumstances of the admissions made in this appeal, and the findings of primary fact made by the Judge, I am satisfied in the light of MO that there is a real risk that the Appellant will be regarded with serious hostility upon return, and as a result a real risk that she could face detention and ill treatment in circumstances that would amount to persecution on account of an imputed political belief and a breach of her Article 3 rights.
21. Given these conclusions, I find that the Appellant has discharged the burden of proof that lies upon her to establish substantial grounds for believing that she will face a real risk of serious harm in the country of return. As a result I do find that there is a real risk of a breach of her Article 3 rights upon return to Eritrea.

The decisions remade

22. In the circumstances I set aside both the decisions upon the asylum and the human rights grounds of appeal and remake those decisions, so as to allow the appeal on those grounds.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 30 March 2016 contains an error of law in the decision to dismiss the Appellant's appeal which require that decision to be set aside and remade so that the appeal is allowed on asylum and human rights grounds.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 21 July 2016