



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/00833/2018  
PA/00844/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 April 2019

Decision & Reasons Promulgated  
On 3 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

FA-W  
EFS  
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr. G. O’Ceallaigh, Counsel instructed by Duncan Lewis & Co.  
For the Respondent: Mr. S. Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellants against a decision of First-tier Tribunal Judge O’Hagan, promulgated on 23 January 2019, in which he dismissed the Appellants’ appeals against the Respondent’s decision to refuse to grant asylum.
2. Given that these are asylum appeals, I make an anonymity direction.

3. Permission to appeal was granted as follows:

“I believe that the grounds raise issues that should properly be considered by the Upper Tribunal given that the Italian authorities accepted responsibility for the appellants’ claims some three years ago and that the deadline for their removal expired in 2016. Both challenges may be argued.”

4. The Appellants attended the hearing. In preliminary discussions, Mr. Walker noted that this was an unusual case, and accepted that, on the evidence before the Tribunal, the Appellants could not be removed to Italy. It had already been accepted by the Respondent that the Appellants could not return to Eritrea or Ethiopia. Therefore the ultimate conclusion had to be that the Appellants should have been granted asylum, and that the decision involved the making of a material error of law.

5. Accordingly, given this concession, I stated that I found that the decision involved the making of material error of law. I set the decision aside, and allowed the Appellants’ appeals on asylum grounds.

### **Error of law**

6. Ground 1 refers to the approach taken by the Judge when considering the risk posed to the Appellants on return to Italy. However, given that I find that ground 2 is made out, I do not need to consider ground 1.

7. Ground 2 states:

“The FTT erred in failing to consider whether the Appellants could lawfully be returned to Italy at all, considering the Italian authorities accepted responsibility for their claims some three years ago and the deadline for their removal expired in 2016.”

8. The Judge refers at [10] to the fact that the first Appellant had been granted refugee status in Italy valid until 25 November 2018. The hearing took place on 2 January 2019, by which time the first Appellant’s refugee status in Italy had expired. Therefore, on the evidence before the Judge, the first Appellant did not have the documentation which would enable her to return to Italy. However, the Judge gave no consideration to this. He proceeded on the assumption that she would be able to return to Italy, without considering how she would be able to do this.

9. Ground 2 submits that the Appellants are unable to return to Italy at all as the transfer under the Dublin III Regulation should have occurred within six months of the acceptance of the request by the United Kingdom for Italy to take responsibility for the Appellants. It is accepted that this issue was not before the Judge, but that it was “Robinson obvious” ([1997] 3 WLR 1162). However, while it might not have been argued in this way, as I have set out at [8] above, the Judge was aware that the first Appellant’s Italian documentation had expired by the date of the hearing.

10. It is clear from evidence in the Respondent’s bundle that a request was made by the United Kingdom to Italy for the first Appellant to be readmitted to Italy on the basis

that she had been granted refugee status by the Italian authorities. The letter from the Italian authorities is at E1, and a translation is at E2. It states:

“We would like to inform you that the request for the re-admission of the aforementioned Eritrean national has been accepted and that we authorise his (sic) re-entry in Italy.

Please kindly send information relative to the date, time and flight on which the transfers will be made.”

11. The details are given as “Alemu Frutta, born 25/02/1992”. The letter is dated 10 August 2015. The Respondent was aware that he had made a request to Italy to readmit the first Appellant. He was aware that this request had been made in August 2015, and that Italy had accepted responsibility for her.
12. The grounds of appeal quote Article 29(1) of the Dublin III Regulation which provides that transfer should happen “as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State”. Article 29(2) provides:

“Where the transfer does not take place within the six months’ time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State.”
13. On the evidence provided by the Respondent in his bundle to the First-tier Tribunal, the request had been made in August 2015. The six month time period had therefore expired in February 2016, almost two years before the decision was made. Despite this, the Respondent gave no consideration to this issue in the reasons for refusal letter. Although these submissions were not made before the First-tier Tribunal, the Judge gave no consideration at all to the practicalities of return to Italy, although he was aware that the evidence before him indicated that the first Appellant’s Italian documentation had already expired by the date of the hearing.
14. In failing to consider how the Appellants would be able to return to Italy, the Judge made a material error of law. On the evidence before me, which was provided to the First-tier Tribunal by the Respondent, responsibility had transferred from Italy to the United Kingdom. Given that it was accepted by the Respondent that the Appellants could not return to Eritrea or Ethiopia, I find that the Appellants’ appeals succeed on asylum grounds.
15. I thank Mr. Walker for his approach to the Appellants’ appeals.

## **Decision**

16. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
17. I remake the decision allowing the Appellants’ appeals on asylum grounds.

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

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

Signed

Date 1 May 2019

**Deputy Upper Tribunal Judge Chamberlain**

**TO THE RESPONDENT**  
**FEE AWARD**

There was no indication that a fee had been paid and so I make no fee award.

Signed

Date 1 May 2019

**Deputy Upper Tribunal Judge Chamberlain**