



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-004508**  
**First-tier Tribunal No:**  
**PA/53559/2022**  
**IA/08536/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 02 April 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**RTL**  
**(anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Wilkins, Counsel instructed by Wilsons Solicitors  
For the Respondent: Ms Young, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 21 March 2024**

**DECISION AND REASONS**

1. The Appellant claims to be a national of Eritrea who seeks international protection on the grounds that she has a well-founded fear of persecution there. She further asserts that the Respondent's refusal to grant her leave to remain in the United Kingdom is a disproportionate interference with her Article 8 rights, and so unlawful pursuant to s6(1) Human Rights Act 1998.

**Background and Case History**

2. The chronology which follows is not comprehensive, but for the purpose of this appeal this is the background to this case. The Appellant has been in the UK a long time. She arrived in July 2010 using

an Ethiopian passport, and a UK visit visa, in another name (EM). She was accompanying her employer's family from Bahrain.

3. On the 27<sup>th</sup> September 2011 she claimed asylum. She told officers that the passport bearing the name EM was not hers, and that in actual fact she was from Eritrea. She was a Pentecostal Christian who had fled the country for fear of persecution. She had made her way to the Middle East, where she had taken employment as a domestic worker. She had suffered abuse and serious ill-treatment there, ill-treatment which had continued after they had arrived in the UK.

4. The Respondent refused protection, finding that the passport that the Appellant had travelled on to gain entry to the UK was genuine. Her claim to be Eritrean was rejected, and a decision made that she was in fact Ethiopian.

5. The Appellant appealed to the First-tier Tribunal. Her appeal was dismissed by a Judge Smith. That decision was then set aside by Deputy Upper Tribunal Judge Baird on the 16<sup>th</sup> April 2012 and the matter remitted to be heard afresh. The result of that hearing was the decision of First-tier Tribunal Judge Simpson, dated the 13<sup>th</sup> November 2013. Judge Simpson did not believe that the Appellant was a Pentecostal Christian, or that she was from Eritrea.

6. No action was taken to remove the Appellant, who remained in the UK. She made a series of further submissions to the Home Office. She produced new evidence to support her claims. These submissions included the following:

- A letter from a Ms Sosi Dawit (supported by ID). Ms Dawit is a British citizen of Eritrean origin. She states that in 2000 she met the Appellant and her mother in an Ethiopian deportation centre. They were deported together to Eritrea.
- A letter from Mr Gashahun Niguse (supported by ID). Mr Niguse is a British citizen of Eritrean origin. He avers that he met the Appellant in Assab in around 2005. He knew her through one of her relatives. He recalls attending her home and having a coffee ceremony there.
- A number of letters from members of the Appellant's congregation at the Trinity Community Church written in support of her claim to be a Pentecostal Christian, plus photographs of her at church.
- A report by Dr Awol Allo which *inter alia* addresses the likelihood of the Appellant being able to obtain an Ethiopian passport to which she was not actually entitled. Dr Allo writes that the process is "fraught with corrupt practices". He explains all one needs to get a passport from the Ethiopian authorities is a ID confirmation from a neighbourhood administrative office, a *kebele*. These registers are not kept in a fashion that facilitates verification checks and the documents can simply be issued on the basis of self-reported evidence/ the production of an affidavit. Getting a document like this, and then a passport, is straightforward. Dr Allo's conclusions are supported by those of the 2018 Danish Country of Origin Information

Report that “a high number of genuine documents with inaccurate information are issued in Ethiopia”.

- A medico-legal report by Dr Juliette Cohen assessing scars which the Appellant states resulted from an assault by Eritrean police in 2005. Dr Cohen finds seven scars highly consistent with the attributed cause, and one that is ‘typical of’. Dr Cohen also conducts a holistic evaluation of the Appellant’s physical injury and mental ill-health and concludes that they are highly consistent with her claimed history.
- A series of reports and letters relating to the Appellant’s mental health. In summary these state that she was referred for urgent attention as long ago as 2011 and that her GP has since then been making regular suicide risk assessments. She has been diagnosed with severe depression and anxiety and is being treated for PTSD with Olanzapine, an anti-psychotic.
- Country background material on Eritrea.

7. The Respondent rejected these submissions on the 18<sup>th</sup> August 2022, but was prepared to accept that they did create a realistic prospect of success before the Tribunal. They therefore amounted to a ‘fresh claim’ and the Appellant was granted another right of appeal.

8. On the 4<sup>th</sup> July 2022 the Competent Authority found there to be ‘conclusive grounds’ that the Appellant was victim of trafficking.

9. This was the state of the evidence when the matter came back before the First-tier Tribunal (Judge Peer) in August 2023. Judge Peer was asked in the context of the protection claim to determine whether:

- a) The Appellant had been deported from Ethiopia to Eritrea as she claimed;
- b) Whether, having regard to all of the evidence, she had shown on the balance of probabilities that she was Eritrean rather than Ethiopian;
- c) Whether she was a Pentecostal Christian;
- d) Ultimately whether she had a well-founded fear of persecution for that reason.

10. In respect of the human rights grounds of appeal Judge Peer was further asked to find that if removed from the UK the Appellant’s mental health would deteriorate such that there would be a real risk of a human rights violation. Her status as a victim of trafficking placed obligations on the Secretary of State which had not, it was argued, been fulfilled.

11. In a decision dated the 1<sup>st</sup> September 2023 Judge Peer dismissed the appeal, in summary finding that the new evidence was not capable of displacing the findings made by Judge Simpson in 2013.

12. The Appellant appealed to this Tribunal on several grounds. At a hearing on the 23<sup>rd</sup> January 2024 the matter came before me. The Appellant was on that occasion represented by Ms Mair of Counsel, and the Respondent by Senior Presenting Officer Mr McVeety.

13. Mr McVeety conceded on behalf of the Respondent that at least one of the Appellant's grounds was made out to the extent that the decision must be set aside in its entirety. Judge Peer directed herself to the principles in Devaseelan (Second appeals - extra territorial effect - ECHR) [2002] UKIAT 00702, and to caselaw which states that the "holder of a genuine passport apparently issued to them has to be regarded as a national of the state that issued the passport save where it has been falsified or altered". Falsification being precisely the Appellant's case, Judge Peer's decision then turns to address the weight to be attached to Dr Allo's opinion. Without setting out what that opinion is, the decision nevertheless recognises Dr Allo's expertise. It then says this [at §40]:

"I find I can place reliance on the report but I am mindful of the *Devaseelan* principles... There is no reason why such a report could not have been tendered previously. I thus approach it with caution".

14. Having so directed itself the Tribunal goes on [at §40] to say:

"The expert gives detail as to how passports could be issued on the basis of fraudulent Kebele identity documents which are easy to obtain. This is evidence that in the Ethiopian context obtaining passports with incorrect details such as name and date of birth is possible and opinion that the appellant's account is therefore plausible. The respondent contends this does not serve to undermine the finding reached in the previous decision in the context of the adverse credibility findings and other evidence. In all the circumstances, I do not find this evidence materially impacts the finding in isolation".

15. And [at §45]:

"The evidence presented by the appellant with regard to the finding that she is Ethiopian amounts to her assertions rejected previously as lacking in credibility to be considered plausible given the expert's view on the basis of her account..."

16. What appears to have happened here, contended Ms Mair, is that the Tribunal wrongly applied the *Devaseelan* principles to Dr Allo's report, and having done so went on to fall into the *Mibanga* trap of diminishing the weight to be attached to evidence 'B' simply on the basis that evidence 'A' has already been rejected. What should have happened is that the Tribunal should have recognised Dr Allo's evidence for what it was: completely new, in *Devaseelan* terms, evidence. Expert evidence is not generally going to fall into the category attracting circumspection or caution, but moreover Dr Allo's opinion about the prevalence of inaccurate Ethiopian passports was entirely based on evidence which postdated Judge Simpson's decision, for instance the 2018 Danish report. That was, with respect to the First-tier Tribunal, a perfectly

good reason why it had not been made available in 2013. There was therefore no basis upon which the Tribunal could have properly directed itself as it did, that this evidence was to be approached “with caution”. What should have happened is that the Tribunal should have given Dr Allo’s evidence whatever weight *it* thought it deserved, then stood back, looked at all of the evidence in the round, and decided whether the Appellant had discharged the burden of proof. As Mr McVeety agreed, this does not appear to have happened. Since the issue of claimed nationality is the central – if not determinative – matter of fact in the appeal, this was plainly a material error.

17. On that basis I issued a written decision dated the 24<sup>th</sup> January 2024 setting the decision of the First-tier Tribunal aside. I ordered that the matter would be remade at a further hearing before me.

### **The Decision Re-Made**

18. At the resumed hearing at the Civil Justice Centre on the 21<sup>st</sup> March 2024 the Appellant was represented by Ms Wilkins of Counsel and the Respondent by Ms Young. I am grateful to them both for their pragmatic approach to the large volume of evidence and pleadings, and for their customarily clear and helpful submissions.

19. The Appellant was not called to give evidence. The reasons for that are set out below. Another witness, Ms Sosi Dawit, was not called either: that is because she was, at the date of the hearing, receiving medical treatment in India. I did hear live evidence from Mr Gashahun Nigussie, given with the assistance of an Amharic interpreter. His evidence is set out below. I heard submissions from the parties, which were summarised for the Appellant by the court interpreter. I reserved my decision.

20. I remind myself that the starting point for my decision is the judgment of Judge Simpson. Judge Simpson’s decision is to be treated as an authoritative determination of the issues in this appeal at the date that it was promulgated in November 2013. Judge Simpson heard evidence from the Appellant, and was provided with a letter from her GP who confirmed that the Appellant had disclosed that she had been raped and that she had been diagnosed with PTSD. She was provided with a report by the Poppy Project broadly supportive of the Appellant’s claim to have been trafficked, but had no conclusive grounds decision from the Competent Authority.

21. Judge Simpson found several reasons to doubt the Appellant’s credibility as a witness:

- The Ethiopian passport that she had travelled to the UK with was genuine
- She speaks Amharic rather than Tigrinyan
- There was no one from the Pentecostal Church in attendance to confirm her claimed faith and she did not seem to know much about it
- She did not seem to know much about Eritrea

- The Appellant had described being beaten by Eritrean police officers who had broken up a prayer meeting that she was part of in November 2005. She claimed to have sustained injuries to her left leg, and yet during her live evidence had apparently indicated that it was her right leg that was injured. There was no medical evidence to support her claim that she had been beaten by the police and Judge Simpson drew negative inference from her having pointed to the wrong leg
- She was confused giving evidence

22. Judge Simpson noted the Appellant's claim to have been raped by her employers in the Middle east but discounted the relevance of that given that she was not being returned there. The Poppy Project had not taken into account that her employers had apparently treated her well, including having put her up in the Hilton Hotel in London when they arrived here. The Appellant had not been coerced with violence or held against her will. Judge Simpson concluded that the Appellant was most likely Ethiopian, that she had not been trafficked and had not shown that she was a Pentecostal Christian.

23. In Devaseelan the Tribunal held that where the issues in an appeal have already been adjudicated upon by an earlier Tribunal, "facts personal to the appellant that were not brought to the attention of the first adjudicator, although they were relevant to the issues before him, should be treated by the second adjudicator with the greatest circumspection....Evidence of other facts, for example country evidence, may not suffer from the same concerns as to credibility, but should be treated with caution". In Djebbar v Secretary of State for the Home Department [2004] EWCA Civ 804 the Court of Appeal clarified that this guidance should not be taken as an injunction to slavishly follow the findings of the previous Tribunal. Finality in litigation is important, but so is fairness:

"Perhaps the most important feature of the guidance is that the fundamental obligation of every special adjudicator independently to decide each new application on its own individual merits was preserved"

24. I have applied those principles in my evaluation of the evidence before me today.

25. I start with one matter that concerned Judge Simpson which has now uncontrovertibly been decided in the Appellant's favour. Having conducted her own assessment of the circumstances in which the Appellant was controlled by her previous employers, Judge Simpson concluded that she could not be described as a victim of trafficking. The Competent Authority, the specialist body charged by the government to determine claims of modern slavery, has found conclusive grounds to accept that the Appellant was, as claimed, held in servitude by her employers, to the extent that she has now been recognised as a victim of trafficking. Ms Young unsurprisingly took no issue with that conclusion, nor with Ms Wilkins' submission that this was not a class of evidence that needed to be approached with *Devaseelan* circumspection or caution.

26. The next tranche of evidence that sheds a new light on Judge Simpson's findings is the medical evidence. As I summarise

above, the Appellant has, since the hearing before Judge Simpson, been able to be assessed by Dr Juliette Cohen. Dr Cohen conducted a physical examination and a mental health evaluation of the Appellant on the 11<sup>th</sup> August 2021. Dr Cohen found the Appellant to bear several areas of scarring, only some of which were attributed by the Appellant to having been beaten by police in Eritrea. For *Devaseelan* purposes the most significant of these are a cluster of scars on the Appellant's left leg which Dr Cohen deem to be "highly consistent" with having been caused in the manner described by the Appellant. As I note above Judge Simpson apparently placed considerable weight on the fact that the Appellant had touched her right leg when describing this incident in court. I now conclude that the medical report rather outweighs whatever inference Judge Simpson was entitled to make on that basis: the scarring speaks for itself. I also note that Dr Cohen identifies other areas of scarring, for instance on the Appellant's hands, which are also highly consistent with having been caused as the Appellant's claims, ie during the police raid on the church.

27. As to Judge Simpson' adverse view of the Appellant's confusion in giving evidence, and inability to articulate her faith, Dr Cohen's report is also illuminating. Dr Cohen recognises that clinicians treating the Appellant had diagnosed her with PTSD and depression in the past, and administers herself a set of diagnostic tools. She concludes as follows:

72. I have been asked to comment on her ability to recall and recount her experiences. She is able to give some details of her experiences but is unsure of other elements, particularly dates, and there were some differences noted in the different documents provided to me as discussed also in paragraph 52 above. Traumatic experiences are often not recalled as 'complete' events but rather as vivid snapshots of memory, with only partial detail recalled, not well-linked to peripheral detail such as date, and these snapshot memories themselves are often not as stable as non-trauma memories but can be subject to variation when recalled in respect of some details, particularly chronology. The trauma of the experiences themselves can affect both storage, retention, and recall of the memories. The depression she suffers and the time elapsed since these experiences are all likely to be affecting her memory also.

73. The Istanbul Protocol paragraphs 142-143 note that the impact of torture and consequent memory impairment can account for inconsistencies in an account, and importantly, states that nevertheless 'a broad outline of the traumatic events and torture will emerge and stand up over time.' In my opinion this is reflected in the extensive medical records, the immigration documents provided and my assessment.

28. Turning to the Appellant's claim to be a Pentecostal Christian, it is right to note that this is not particularly a feature of the case before me, since the Respondent accepts that all the Appellant need do to make out her protection claim would be to establish that she is a national of Eritrea. It is however important to acknowledge that Judge Simpson had also drawn adverse inference from the fact that the Appellant was not supported at the hearing by anyone else from the Pentecostal Church. Today the Appellant produced letters from no fewer than ten members of her congregation, who speak of her in warm and sincere terms. Two of the church members attended the hearing to support the Appellant. It the collective evidence of this congregation that the Appellant has been a dedicated member of their church

since 2014, that she attends services regularly and holds prayer meetings with others.

29. I pause here to note that of the six reasons given by Judge Simpson for dismissing the appeal before her, five have been directly answered by new evidence produced today. None of that evidence emanates from the Appellant herself, and I am satisfied that it is all evidence to which I can attach significant weight.

30. Against that background I turn to consider the central issue in the case: whether the Appellant is in fact Eritrean as claimed.

31. In 2013 Judge Simpson had before her a *prima facie* genuine Ethiopian passport and what she regarded as an otherwise weak case. It is therefore unsurprising that she concluded that the Appellant was not Eritrean, and as I have already directed myself, that decision is to be treated as an authoritative determination of that issue at the date that it was made.

32. Today I have significant new evidence going to the matter of nationality.

33. It has always been the Appellant's case that the passport that she used to gain entry to the UK was a genuine Ethiopian passport which had been fraudulently obtained. At the date of the appeal before Judge Simpson there was no evidence to indicate but this was even possible. Dr Awol Allo's report is dated the 2nd of September 2021. It is based largely on evidence dating from 2018 onward, in particular a report prepared by the Danish immigration service. That report, and Dr Allo, conclude that it is the system's reliance on locally issued identity documents that render it so vulnerable to abuse. Identity documents issued by neighbourhood administrative offices in Ethiopia are the primary document required in order to obtain an Ethiopian passport. Those documents are easily forged. The register is not kept in a fashion that facilitates verification checks, and these certificates can even be issued simply on the basis of assertions made by the applicant. It is therefore easy to see how a genuine Ethiopian passport might be obtained by a person who is not lawfully entitled to it. Whilst I must bear in mind the presumption that validly issued documents do indeed belong to the holder, Dr Allo's evidence offers significant support to the Appellant's claim.

34. That is however only one side of the coin. On the other is the Appellant's assertion that she is in fact Eritrean. In order to prove that matter, the Appellant relies on witness evidence, both written and oral.

35. The live evidence came from Mr Gashahun Nigusie, who adopted his witness statement dated the 9<sup>th</sup> February 2023. Mr Nigusie explains that he came into contact with the Appellant sometime in 2015. He had gone to a charity shop in Manchester to buy some clothes. He had asked the assistant a question and they had called to somebody in the back of the shop. The name they called was one he recognised. When the Appellant came from the back of the shop he saw that she was indeed the person he had known of that name. He recognised her as being somebody that he had spent a day with, a long time ago. Whilst in Eritrea he had been employed as an assistant to a lorry driver, and sometime in 2005 they had journeyed to Assab for work. Whilst there he had



visited the home of a family friend and it was there that he had met the Appellant - his friend was her cousin. They had taken part in a coffee making ceremony together. He was with the Appellant from approximately 10.00 in the morning until 7.00 in the evening. Asked in evidence why he was there so long he explained that the weather had been extremely hot at that time, and that he and the lorry driver were waiting until the air had cooled before continuing on their journey. Mr Nigusie explained that when he had seen the Appellant again in the shop, she had not known who he was. He had to remind her of the time that they had met. Since that meeting they have kept in contact, mainly by telephone, but he did visit her again in 2022 when she was in mourning for a family member in Eritrea. Asked why he had come to court twice on her behalf and provided a witness statement, Mr Nigusie stated that he had been happy to do so, because he has "no doubt" that she is Eritrean and he understands how important it is for her to have her status settled.

36. Written evidence, supported by evidence of identity, comes from the following witnesses, each of whom aver that they believe the Appellant to be Eritrean:

- Ms Sosi Dawit gave live evidence before the First-tier Tribunal, but was unavailable to attend the hearing before me because she was in India. She is a British national of Eritrean origin. Ms Dawit told the First-tier Tribunal that she had first met the Appellant in 2000 whilst at the Jalmada deportation centre in Ethiopia. The Appellant had been with her mother at the time and Ms Dawit was also being held there. They were deported together to Eritrea. It was a very long journey; they travelled by day and night and had nothing to eat. They were separated on arrival and did not see each other again until they were reunited in the United Kingdom. Ms Dawit explains that they met again by chance, when she was waiting for a bus at Piccadilly bus station in central Manchester. She saw the Appellant and recognised her. They greeted each other and swapped phone numbers. Ms Dawit said that although she had recognised the Appellant she had changed a lot: she looked depressed and cried a lot about how much she had suffered. Since that meeting Ms Dawit has made an effort to stay in contact with the Appellant. She speaks to her or sees her every two to four weeks. She says she does so because she knows what its like to be in her shoes: she too has suffered a lot.
- Dr Sarah Ogbay is a British national of Eritrean origin. She is a qualified interpreter who works for, amongst others, the University of Manchester and the British Council. She is the Chair of the Greater Manchester Eritrean Community and is the co-founder of the Network of Eritrean Women. Dr Ogbay explains that she met the Appellant whilst interpreting for her at the GP practice in Manchester. She has known her now for seven or eight years. Dr Ogbay states in terms that she believes the Appellant to be Eritrean, and that she would not give this statement if that were not her truly held belief. She sees the Appellant from time to time at Eritrean community events in Manchester, such as weddings, baptisms and memorial services for members of the community. She states that when a member of the community dies, there is a long two week period of mourning, and that the Appellant is familiar with the Eritrean way of mourning. Dr Ogbay states that in the Eritrean community they do not see the

Appellant as being Ethiopian: she comes to their events, she knows how to make coffee in the Eritrean way. She is much loved by the community.

- Mr John Ashabaka, a British national of Eritrean origin and formerly the development worker for the Eritrean Community Association of Greater Manchester, writes to confirm that while he was in that role between 2011 and 2014, the Appellant was an active member of the Association. Since he has left that role he is aware that she has continued to participate at every event organised by the Association, such as Independence Day, martyrs day and other social events.
- Ms Hana Tekle, a British national of Eritrean origin who became friends with the Appellant in 2011 after meeting her in a library. They see each other often and regard each other as close friends. Ms Tekle states that she is “convinced” that the Appellant is from Eritrea
- Ms Meron Hagos, British national of Eritrean origin who became friends with the Appellant in 2011 after meeting her at church. Ms Hagos has only ever been to the Appellant's home on one occasion, but lives in her neighbourhood and sees her regularly on the street. Ms Hagos “knows” that the Appellant is Eritrean, by looking at her and by their interactions. She does not however ask her about her past as she knows it upsets her. She often sees her looking sad and crying.
- Ms Caroline Vere and Ms Anna Barker, both British nationals and members of the Appellant’s church, mention in their statements how proud she is of her Eritrean heritage and how she has in the past organised cultural events such as hosting an Eritrean Christmas meal at the church and providing Eritrean bread.

37. Having heard Mr Nigusie’s evidence Ms Young did not ask me to find him to dishonest. Although somewhat unusual, she did accept that it was possible that he would have remembered the Appellant after all these years if he had spent an entire day with her. She did however ask me to limit the weight to be attached to that evidence insofar as it was relied upon as evidence of nationality. Even if I accepted Mr Nigusie’s evidence, all it established was that the Appellant was at her cousin’s house in Assab in 2005. As to the written evidence of the witnesses, Ms Young quite properly reminded me that the weight to be attached to this untested evidence was also limited.

38. I found the evidence of Mr Nigusie to be straightforward and credible. He does not know the Appellant as a friend; he is not related to her. He has made the effort to write, give a witness statement and twice attend court in this case simply because, he explained, he knows it could be significant for her. His account of how he met her again in the UK, and how his memory was jogged by hearing her – quite unusual – name had the ring of truth about it. I am satisfied that his evidence does establish that the Appellant was in Assab in 2005. Ms Young is correct to say that this is not determinative of nationality, since obviously she could have been visiting. I have however had regard to Ms Wilkins’ point in reply that Eritrea has notoriously tight border

control, and that the likelihood of an Ethiopian national being able to visit the country in 2005 was slim.

39. I have also had regard to the written evidence, and considered Mr Nigusie's evidence in the round with the seven other witnesses who have all come forward to say that they believe the Appellant to be Eritrean. The significance of this evidence is obviously reduced by the fact that it was only produced in writing. Nonetheless it is evidence that I am able to attach some weight to. All of those who write have produced copies of their identity documents, which the Respondent has had the opportunity to check. Their evidence is all consistent. There is nothing obvious in any of these letters to give me a cause for concern.

40. The witness of the most immediate significance is Sosi Dawit, who although she was unable to appear before me, had attended the hearing before the First-tier Tribunal. Ms Dawit's evidence is important because she says that she knows the Appellant because they were deported from Ethiopia to Eritrea together. Ms Wilkins submits, and I accept, that this is not likely to be a journey that would fade from the memory, and it is perfectly plausible that Ms Dawit and the Appellant would have recognised each other. In any case where a long separation is ended by a chance meeting, there is scope for the Respondent to question its likelihood. Ms Wilkins makes the interesting point that the Appellant's good fortune on that front has to be balanced against her bad luck in not having met anyone else who might have been able to speak more directly to her nationality, for instance a family member. It is of course also the case that all of us from time to time will bump into people we know without such meetings being planned. It is simply the way of the world. That being the case I am prepared to accept that Ms Dawit and the Appellant did meet each other by chance in Manchester at the bus station. I am further prepared to accept that what Ms Dawit says about having spent a considerable amount of time with the Appellant whilst they were deported together to Eritrea is true. That is not something that either woman is likely to forget. That is significant because, the Respondent now accepts, it, read with Dr Allo's evidence, puts to bed any suggestion that the Appellant might also be entitled to Ethiopian nationality: that is a vanishingly small possibility for someone who was deported during this period.

41. The next witness in terms of significance is Dr Sarah Ogbay, who is obviously well placed to comment on whether or not someone is Eritrean. Not only is she Eritrean herself, but she is heavily involved in the cultural and social life of that community. She states that she has, over the years, seen the Appellant frequently at Eritrean community events, and that she has personally witnessed the Appellant exhibiting behaviour particular to Eritrean nationals: she gives the example of mourning rituals. Similarly John Ashabaka states that over many years he has witnessed the Appellant taking part in Eritrean events organised in Manchester. I struggle to see why either of these witnesses should lie in order to support a fraudulent claim by an Ethiopian. Nor, it seems to me, would they be people who were easily fooled. The evidence of these witnesses finds some general support from that of Ms Tekle and Ms Hagos, both of whom seem to have no doubt at all about the Appellant's origins. Finally there are the witnesses from the Appellant's church. Obviously neither Ms Vere nor Ms Barker have any expertise on whether someone is an Eritrean national. Their function is simply to honestly report what they know to be true: that over a lengthy period of acquaintance the Appellant has made an effort to educate them

about Eritrean culture, food and ritual. It is of course possible that she has done so cynically to create an impression of her being Eritrean. The same might be true about all of these relationships. I do however regard it as being very unlikely. Over such a prolonged period such a 'long con' would be an impressive feat indeed.

42. Drawing all of this together I find as follows. The findings of Judge Simpson made in 2013 must now be seen in the light of a considerable quantity of evidence that centrally goes to two issues: the Appellant in fact being Eritrean, and there being an alternative explanation as to how she came to be in possession of a genuinely issued Ethiopian passport. Some of that new evidence directly addresses concerns expressed by Judge Simpson, and all of it, weighed cumulatively, creates a picture which indisputably supports the Appellant's case, as it has been since the beginning. She is refugee from Eritrea who found herself undocumented and vulnerable in the middle east; there she became a victim of trafficking and endured very serious harm at the hands of her employers; as a victim of trafficking she was brought to this country using a passport to which she was not entitled. Having had regard to all of the evidence before me I am wholly satisfied that the Appellant has discharged the burden of proof. This is a paradigm case of the vital importance of publicly-funded, high quality representation for refugees. The Appellant, suffering from the sequelae of the terrible abuse she has suffered, was at first unable to articulate and prove her claim. Today, with the assistance of her current legal team, she has presented a cogent and wholly persuasive case. Without that assistance the United Kingdom could well have found itself in breach of its obligations in respect of at least three international human rights instruments: ECAT, the ECHR and the Refugee Convention.
43. I allow the appeal on protection grounds. It follows that I need not address the Appellant's discrete claims arising under the Human Rights Act 1998.

### **Decisions**

44. The Appellant is a vulnerable witness. An order for anonymity remains in place.
45. The appeal is allowed on protection grounds.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
22<sup>nd</sup> March 2024