



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03137/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 13th April 2015

Decision & Reasons Promulgated
On 22nd April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MS HIDAAT ASGHEDOM ZERE
(ANONYMITY NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown of Counsel

For the Respondent: Mr Harrison

DECISION AND REASONS

Introduction

1. The Appellant born on 6th September 1958 is a citizen of Eritrea. The Appellant who was present was represented by Mr Brown of Counsel. The Respondent was represented by Mr Harrison, a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for asylum in the UK and that application had been refused by the Respondent on 28th April 2014. The Appellant had appealed that decision and her appeal was heard by Judge De Haney a Judge of the First-tier Tribunal sitting at Manchester on 5th September 2014. The judge allowed the Appellant's appeal on asylum grounds.
3. The Respondent had made application to appeal that decision the grounds asserting that the judge had misdirected himself by failing to follow the country guidance case of **MO Eritrea CG [2011] UKUT 00190**. That application was refused by First-tier Tribunal Judge Cox on 6th October 2014. The Respondent had renewed the application in precisely the same terms essentially stating that the judge had rejected the entirety of the Appellant's account and allowed the appeal on the basis that she had overstayed her visa, and the Appellant could only therefore be seen as a failed asylum seeker who had left Eritrea legally and was not at risk on return in line with the findings of **MO**.
4. Permission to appeal was granted by Judge of the Upper Tribunal Coker on 28th January 2015 on the basis that it was arguable that inadequate reasons have been provided firstly for relying upon an expert report and finding that she would at risk of persecution on return to Eritrea. Directions were issued for the Upper Tribunal firstly to consider whether an error of law had been made and the matter comes before me in accordance with those directions.

Submissions on behalf of the Respondent

5. Mr Harrison referred me to the Grounds of Appeal and did not seek to expand upon those matters raised. There was discussion between myself and the representatives in respect of the matters that needed to be considered in this case and I indicated to Mr Brown that I did not require any additional or separate submissions from him in this respect. I indicated that I would provide a decision in writing with my reasons which I now provide.

Decision and Reasons

6. It was something of an exaggeration for the Respondent to state in the resubmitted Grounds of Appeal that the Immigration Judge had rejected the entirety of the Appellant's account. This is in some respects an unusual case in terms of those seeking asylum from Eritrea. However the judge had made clear at paragraph 10 that having heard oral evidence both from the Appellant and from a witness, Mr Mellor, he found both witnesses to be credible witnesses with certain reservations about the Appellant's evidence that he had detailed below. It is also the case that there appears to have been certain agreed factors within the Appellant's history that perhaps made this an unusual case. Firstly, it appears to have been agreed evidence that the Appellant had obtained asylum status in America some years before but had nevertheless returned to Eritrea. Secondly, the Appellant was highly educated and had been involved in a not inconsiderable amount of international travel connected

with her work. Thirdly, the Appellant had lawfully exited Eritrea on a one month visit visa. Those factors perhaps place this case in an unusual category in that this Appellant had on agreed evidence exited Eritrea lawfully. However as indicated within the decision thereafter she had remained outside of Eritrea for over two years longer than the exit visa permitted additionally to claiming asylum.

7. The judge was clearly aware of the country guidance cases of MA and MO. The case of MO in general terms adopted the approach taken in the earlier case of MA.
8. The central criticism from the Respondent in this case is that as the Appellant had not left Eritrea illegally then being simply a failed asylum seeker would not place her at risk on return.
9. In MO headnote (v) the case stated:

“Whilst it also remains the position that failed asylum seekers as such are not generally at real risk of persecution or serious harm on return on present evidence the great majority of such persons are likely to be perceived as having left illegally and this fact, save for very limited exceptions, will mean that on return they face a real risk of persecution or serious harm.”
10. In reality the case before the judge fell outside the general consideration and evidential analysis that had taken place in the case of MA [2007] and MO [2011]. Those cases were centrally concerned with the position of those who had exited Eritrea illegally, or may be presumed to have exited illegally when they were approaching or within the wide bracket of military service.
11. This Appellant aged 55 was above the draft age for military service and had exited legally for an envisaged period of about one month.
12. The Presenting Officer before the First-tier Judge had accepted that essentially the Appellant was not in a category covered by the country guidance case of MO or MA (paragraph 26). That is largely correct.
13. The judge therefore had to look at the potential risk on return in light of the evidence available to him and mindful of the standard of proof in asylum cases. As indicated above in large measure the judge had found the Appellant and her witness to be credible and there were agreed features within this case. Secondly, the judge had considered as he was bound to do an expert report prepared on behalf of the Appellant and dated 30th July 2014. Whilst the Respondent submits that much of that report relied upon information predating the case of MO as indicated above this Appellant did not in reality fall within the categories considered in MO. Thirdly, the report did not stop at an earlier period of time and was written with this case in mind and specific to this case in large part. Further the case of MO headnote (i) noted a number of indications that it had become more difficult for Eritreans to obtain lawful exit from Eritrea since the case of MA in 2007. That would seem to indicate a hardening rather than a softening of the attitude of the Eritrean authorities.

14. The judge also clearly had in mind that whilst the Appellant may have been granted a lawful exit for a narrow period of time she had remained unlawfully out of the country for over two years and it is somewhat difficult to see therefore what distinction if any the Eritrean authorities would make between a person exiting illegally or a person exiting legally but overstaying without permission well beyond that lawful exit period. The judge also took into account as he was entitled to do that the Appellant could not present in mitigation the fact that she took part in the struggle for independence and also took into account the fact that the Appellant had previously claimed asylum in America from the Eritrean authorities and therefore this claim would represent essentially a second "offence".
15. In those circumstances the judge was entitled to look at all of the above facts and to have regard to the circumstances that he summarised in paragraph 28 to reach the conclusion that applying the appropriate standard of proof in asylum cases it was reasonably likely that she would face persecution if returned to Eritrea. That was a decision open to him on the evidence and does not disclose a material error of law.
16. As First-tier Tribunal Judge Cox stated it may well be that the facts of this Appellant's case did not fit squarely or at all within the central considerations and risk categories looked at in MA and MO. That does not, and of course should not, prevent the judge from assessing the risk on return in respect of the individual before him and in circumstances where the Presenting Officer at the hearing conceded the Appellant's circumstances were not really covered by a country guidance case.

Notice of Decision

There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

Anonymity not retained.

Signed

Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Lever