



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/08406/2015

**THE IMMIGRATION ACTS**

Heard at Birmingham Employment Centre  
On 14<sup>th</sup> October 2016

Decision & Reasons Promulgated  
On 12<sup>th</sup> July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

A S G  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Howard (Solicitor)  
For the Respondent: Ms H Aboni (HOPO)

**DETERMINATION AND REASONS**

1. The Appellant is a female, a citizen of Eritrea, who was born on [ ] 1990. She appealed to the First-tier Tribunal against a decision of the Respondent dated 15<sup>th</sup> May 2015 refusing the Appellant's protection claim under the Refugee Convention and the European Convention on Human Rights.

2. The Appellant's appeal was heard by First-tier Tribunal Judge Meyer at Sheldon Court and promulgated on 7<sup>th</sup> July 2016.
3. It is a feature of this case that the Appellant is married to a man who has been granted refugee asylum status and they have a baby daughter together, who was born on [ ] 2015, and both appear as father and mother on the birth certificate respectively. At paragraph 34 of the determination, the judge held that both of them "were married or in a genuine, subsisting and durable relationship akin to marriage before entering the UK and remained together as such with their baby daughter" (paragraph 34). The judge also found that the Appellant's partner was at real risk of persecution if he returned to Eritrea "on account of being identified and attacked as the son of an ELF commander," (this being the Eritrean Liberation Force), and that he had been persecuted on grounds of his imputed political opinion (paragraph 36). The judge went on to hold that, "this risk extends to the Second Appellant and their child, because they too are part of the same family and are likely to be targeted for the same reasons that the First Appellant was targeted in the past" (paragraph 37). The judge went on to hold that, although it was not necessary for a decision to be made in this regard, the appeal would also be allowed under Article 8 of the European Convention on Human Rights because the First Appellant (the husband) could not reasonably be expected to join the Second Appellant (the Appellant herself) in Eritrea or Ethiopia, for that matter, "given that he was deported from Ethiopia with his family after the border war" (paragraph 39).
4. The appeal was allowed.
5. The Grounds of Appeal by the Secretary of State argue that the decision was irrational in the light of the fact that the judge had concluded that the Appellant was not an Eritrean national, such that she could not be considered at risk on return. Permission to appeal was granted on 28<sup>th</sup> July 2016.
6. At the hearing before me on 14<sup>th</sup> October 2016, Ms Aboni, appearing on behalf of the Respondent relied upon the Grounds of Appeal. She submitted that the Appellant had her appeal allowed on the basis that she was the wife of a recognised refugee (AA/11502/2015) whose appeal had been allowed on the finding that he was an Eritrean national and had exited his country illegally. The judge had considered this appeal to be parasitic on the findings made in relation to her partner/husband. However, there was no independent claim for asylum in Ethiopia or Eritrea. Ms Aboni also submitted that the Secretary of State had initially doubted that the Appellant was a national of Eritrea (see paragraphs 17 to 22 of the refusal letter dated 15<sup>th</sup> May 2015). Judge Meyer had in fact adopted this reasoning (see paragraphs 24 to 33). She also made a primary finding of fact that the Appellant had not discharged the burden of proof of showing that she was Eritrean (at paragraph 34). In these circumstances, it was perverse for the judge to go on to consider that the Appellant would be at risk in Eritrea due to her husband's political opinion. She had simply failed to reconcile her own findings of fact. Furthermore, even if the Appellant was not herself a citizen of Eritrea, it was unclear why she could not live as a family with her partner/husband in Ethiopia, if she herself was a national of Ethiopia.

7. In reply, Mr Howard submitted that the refusal letter itself had stated that the Appellant would be removed to Eritrea, so that the assumption was not that she was a national of Ethiopia at all, which remained unproven on the Respondent Secretary of State's own premises, and paragraph 22 of the refusal letter did not make rational sense if it first claimed that the Appellant had failed to demonstrate that she was a national of Eritrea, but then went on to say that she would be removed to Eritrea, "as this is the country of which you claim to be a national."
8. Second, there was now a dependent child, and there was no doubt that the child's father, a refugee, was an Eritrean national, who had been granted asylum specifically on the basis that he had been attacked as the son of the commander of the Eritrean Liberation Front (see paragraph 36 of the determination). It is in these circumstances that the judge had firmly concluded (at paragraph 34), that

"I have found that the First Appellant is a refugee. I find that it would be appropriate for the Respondent to grant leave in line to the Second Appellant and their child, as the dependant spouse and child of a refugee."

It was difficult to see how such a conclusion could be faulted.

9. Mr Howard also made submissions on Article 8 and stated that given the findings at paragraph 34 [just stated above] it followed that the conclusion at paragraph 39 with respect to Article 8 could be no different, namely, that it would not be reasonable to return the Appellant either to Eritrea or to Ethiopia. Mr Howard submitted that Ground 5 in the Respondent's Grounds of Appeal states that the finding in relation to Article 8 (at paragraph 39) was no more than a passing comment concerning the application under Article 8 and it was unclear precisely why the family could not live in Ethiopia. However, this was predicated on the assumption that the Appellant, if not a national of Eritrea as the refusal letter concluded, was a national of Ethiopia, but this had never been proven by the Respondent Secretary of State, and the removal directions were in any event to Eritrea itself.
10. At the end of the Hearing I proceeded to write up my Determination on the basis that I found there to be no error of law, as I set out below.

#### **No error of law.**

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) TCEA [2007] such that I should set aside the decision). My reasons are as follows. This is a case where the judge has found as a fact that the Appellant and her partner/husband, were married or were in a genuine and subsisting relationship that was akin to marriage before they entered the UK and they remained together, "as such with their baby daughter" who was born to them on 17<sup>th</sup> August 2015.
12. The Appellant's partner/husband, has been found to be a refugee, as a citizen of Eritrea, who cannot return to Eritrea because he has been previously attacked as the son of an ELF commander. The Appellant herself, who, as the judge found, had

already been married to her husband or partner, or was in a genuine and subsisting relationship, prior to their entry to the UK, has also claimed to be a national of Eritrea, although this has been rejected by the Respondent Secretary of State, as well as by the judge.

13. It has not, however, been proven that the Appellant is a national of Ethiopia, and the burden for that rests not upon the Appellant, but upon the Respondent Secretary of State. Notwithstanding this failure to show that the Appellant was a national of Ethiopia, it is being maintained that she could return to Ethiopia, and go there with her husband and child.
14. This does not follow, and not least under Article 8 of the ECHR, where the judge found that, even if the Appellant herself went to Ethiopia, (of which she was not a proven national), her partner/husband could not be expected to go there, "given that he was deported from Ethiopia with his family after the border war" (paragraph 39).
15. It is well-established that for the decision of a First-tier Tribunal to be set aside it must be shown that the decision was "perverse" or "irrational" and this is "a very high hurdle" (see **R (Iran) [2005]** at paragraph 11).

### **Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

This appeal is dismissed.

### **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 him or any member of their 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.

Signed

Date

Deputy Upper Tribunal Judge Juss

23<sup>rd</sup> January 2017