



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01166/2017

THE IMMIGRATION ACTS

Heard at Field House
On 2nd June 2017

Decision & Reasons Promulgated
On 19th June 2017

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

N I F
(ANONYMITY DIRECTION IS MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Thirumaney, instructed by Shervins Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant appeals against the decision of First-tier Tribunal Judge Devittie dismissing her claim for asylum, humanitarian protection and protection under the European Convention.
2. The appellant is a national of Eritrea born on 21st January 1985 and arrived in the United Kingdom on 16th September 2016 with a visit visa. She claimed asylum on 15th December 2016 as fearing persecution on the basis of her imputed political opinion. She is exempted from military service on medical grounds. She was

employed in Kuwait on a work permit from 2008 onwards and on 1st January she travelled to Eritrea from Kuwait to visit her family and asserts she was detained with her brother on 10th January 2015, held for one night and questioned about her brother's activities.

3. She was released on condition that she would not leave Keren in Eritrea and was requested to report daily. She did so until 11th February 2015 but then became unwell. She developed a close friendship with one of the officers in charge of the office where she reported and he expressed his frustration at the prolonged national service and was desperate to flee Eritrea. She therefore collaborated with him in leaving the country illegally via Sudan. He assisted her by returning her passport which had been seized by the authorities and with the help of an agent engaged by her father. From Sudan she took a flight to Kuwait where she resumed her employment. On 16th September 2015 she entered the United Kingdom with a return ticket on a holiday to visit her sister. On 10th October 2015 she was notified by her employer that her employment was being summarily terminated and that they would make arrangements for her to return to Eritrea and she would no longer be entitled to a work permit.
4. She claimed asylum on 25th November 2015 and no longer has status in Kuwait. She claims that she would be, on return to Eritrea, persecuted because she had breached the conditions of her release from custody and had left the country illegally. Furthermore she had been politically active against the Eritrean authorities in her Facebook activities and her posts had interacted with various anti-Eritrean organisations.
5. The grounds for permission to appeal were as follows and I set them out as presented by Ms Thirumaney in her oral submissions.
6. Ground (i) the judge had applied a higher standard of proof than that required to be applied in asylum claims. In particular at paragraph 9.1.(iv) the judge had stated

"In my view the probabilities support the conclusion that the fact that her alleged illegal exit would give her a basis for an asylum claim is a matter that would most certainly have exercised her mind when she arrived in the United Kingdom and even when she took the decision to apply for a visa".
7. It was submitted that the judge had therefore applied this incorrect standard of probabilities throughout the determination. It was submitted that the judge had dealt with the asylum claim as a whole applying the incorrect standard of proof and not the "reasonable degree of likelihood which is the lower standard applicable".
8. Ground (ii), the judge's rejection of the core part of the appellant's claim which was her detention was fundamentally flawed. The judge had stated at 9.(i)

"She had just arrived in Eritrea, so on what possible basis one may ask was she supposed to know the details of her brother's activities'

It was submitted that the judge's findings in disbelieving the appellant's detention was flawed and the representative submitted that the assessment was unreasonable because the authorities would not inform the appellant as to their line of inquiries that they were pursuing in an investigation".

The appellant's statement at paragraph 12 identified that she was questioned to ascertain whether she knew anything about her brother and forced to report. Her interview record identified at question 37 that she was not given reasons for the arrest but "they kept asking about my brother's activities and what I know and what he was doing". It was submitted that the judge's findings in rejecting the core part of the appellant's claim was contrary to the evidence provided by the appellant. It clearly stated that the authority interrogated her to obtain information about her brother's political activities and ordered her to report and not to leave Keren or Eritrea. The only person in a position to answer regarding the Eritrean inquiries was the Eritrean authorities themselves. The evidence provided was that the brother would speak about politics and was not happy with the government and the indefinite slavery service.

9. Ground (iii) was in relation to the circumstances of the appellant's asylum claim. The judge dealt with the appellant's evidence in relation to her illegal exit and the termination of her employment in a cursory manner. The Home Office in their refusal at court accepted the appellant was credible in respect of her employment and the termination of her employment. The decision did not explain why the judge found against the appellant in respect of the circumstances of her asylum claim in the UK. The determination was confusing and contrary to the evidence presented on a material matter and there was a lack of clarity.
10. Ground (iv), there were a lack of findings as to the appellant's father's detention in Eritrea. The appellant gave details in respect of the father's detention in Eritrea after the appellant failed to report but this was not considered at all. At paragraph 9 of the appellant's statement she stated that after she failed to report on 12th February 2015 the police raided her house and questioned her father about her whereabouts. The father was detained by the police for a month and he denied having any knowledge about her. The father was afraid to pass information over the phone as he was afraid that the phone was bugged. Contact had been reduced so that she did not cause him further problem.
11. Ground (v), there were a lack of findings on the appellant's travel documents and illegal exit from Eritrea. The judge failed to attach any weight at all to the various documentary evidence submitted to prove the appellant travelled illegally out of Eritrea in February 2015 and resume work with an employer on a later date since she was detained in Eritrea. The appellant explained that she had no choice but to claim asylum as her employment was terminated. She provided detailed evidence in respect of her travels and the tickets and travel itinerary were pivotal evidence presented by the appellant to prove her entry and illegal exit out of Eritrea and which confirm that she delayed in reporting back to work in Kuwait by a month since she was detained in Eritrea.

12. Ground (vi), the judge's consideration of the appellant's Facebook activities is flawed and the judge failed to consider the following factors presented in respect of her Facebook. The judge discarded the appellant's evidence merely due to a slight difference in the spelling. The spelling may differ but the sound of the name was still similar and her photos were all over her Facebook account and all over posting in her Facebook account and the postings related to the Human Rights situation in Eritrea. The Facebook was the demonstration that she was against regime and critical of all the unfairness and human rights abuses. She had shared posts with many anti-Eritrean regime websites such as Asmarino and Assenna.
13. In submissions Ms Thirumaney emphasised that the judge had applied a higher standard of proof and the assessment had not shown anxious scrutiny. The judge had not taken into account the background evidence. The only body in the position to answer the questions regarding the Eritrean authorities was the Eritrean authorities themselves. In relation to the sequence of events the Home Office letter had accepted the employment of the appellant in Kuwait and that she was unable to return. The judge's findings lacked clarity. There was a lack of findings in relation to the appellant leaving Eritrea in January 2015 and the appellant had presented her travel itinerary. She was detained on 10th January and there were details of her fleeing to Sudan which were crucial pieces of evidence and had shown she had not pre-planned claim. The appellant had previously been in the UK in 2013 but had not claimed asylum at that point. The judge had placed insufficient weight on that matter.
14. Nowhere had the judge considered the father's detention. The Facebook activity had only been dealt with cursorily. Albeit that her name was spelt incorrectly there were photographs and postings; the judge had not considered the Facebook activity.
15. Mr Nath in response confirmed that the judge had applied the correct standard of proof and this was clear from the determination. In relation to the questioning the judge was entitled to make the findings that he did. It was a finding about the appellant's statement and the findings on aspects of the Eritrean authorities' views was open to him.
16. In relation to the third ground there was a clear treatment of the sequence of events at 9.(iii) and nothing in it was unclear. It had systematically set out the evidence and 9.(iv) was a credibility finding. The judge clearly found that the appellant was complicit in relation to the termination of the employment.
17. The judge had addressed the flight itinerary and had looked at all the evidence when coming to his conclusions.
18. The lack of reference to detention of the father was covered by virtue of the judge having looked at the evidence in the round. The judge had considered the core aspects of the claim and rejected them. The judge had not ignored the issue of the brother and had taken it into account.
19. In relation to the Facebook activity the judge had merely stated that there was a misspelling and that was a full answer to the criticism.

Conclusions

20. I will deal with each of the criticisms of the determination as they are made in my conclusions.
21. It is quite clear that the judge referred to the country guidance of **MO (illegal exit risk on return) Eritrea CG [2011] UKUT 00190** at paragraph 7, identifying that it has become more difficult for Eritreans to obtain lawful exit from Eritrea. The judge was fully aware having cited from the head note that the Eritrean authorities continue to envisage lawful exit as being possible only for certain categories of people. He also recorded that the appellant had confirmed that she was exempted from military service on medical grounds. The judge did note that at paragraph (v) of the head note that

“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”.

22. However on reading the decision as a whole the judge did not accept her claimed arrest, and did not accept that she had therefore left illegally.
23. In relation to ground (i) the judge clearly directed himself at paragraph 7, stating “in considering this appeal I bear in mind that it is for the appellant to establish that there is a reasonable degree of likelihood that she would suffer persecution for a Convention reason if she is returned to Eritrea”.
24. At paragraph 91 the judge declared that he had applied close scrutiny to the evidence of the appellant and found that there were factors which were sufficiently significant in his view to “seriously undermine the core of her evidence”. It should be noted that the core of the appellant’s evidence was that she was detained in Eritrea and had exited illegally. That is clearly something that the judge did not accept and for which he gave sound reasons and it is evident that he applied the correct standard of proof. Although the judge referred to “the probabilities when referring to the illegal exit at paragraph 9.(iv)”, to my mind this is merely shorthand for the clear direction that the judge gave himself a matter of paragraphs before applying it. I am not persuaded that there was incorrect application of the burden of proof. The judge was clear that the claim was fabricated on the totality of the evidence.
25. In response ground (ii), that the judge’s rejection of the core part of the appellant’s claim was fundamentally flawed, the judge was clearly aware of the evidence of the appellant as he set out the oral evidence at paragraph 5(i) to (ii). The judge noted that her claim was that the sole reason for her arrest was the authorities wish to question her to obtain details about her brother’s exact activities (she had undertaken none herself) and the judge at the close of paragraph 9.1.(i) made a series of questions to be answered. Those questions may be irrelevant but the judge rejected the appellant’s evidence for the reasons given at 9.1.(ii) which was that in cross-examination the appellant’s evidence

“As to what she was questioned about in relation to her brother’s activities I found to be entirely unsatisfactory. She was unable to give any detail as to what it is that was the subject of the authorities’ inquiry and adverse interest in her brother. Surely it cannot be the case that they arrested her to ask if she knew anything adverse about her brother’s activities, without having any specific inquiry to pursue”.

26. Although the second part of that paragraph would seem to be superfluous and comment by the judge as to the appellant whether the appellant professed to have knowledge or not, the fact is that the judge criticised the appellant’s account of her detention and the questioning that she underwent at the hands of the Eritrean authorities specifically noting that she was unable to detail any specific inquiry at all. This the judge found not credible and this was a finding which was entirely open to him. This section repays careful reading because on first blush it would appear that the judge is merely rejecting the appellant’s evidence on the basis that the Eritrean authorities would arrest, detain and question her. That, however, is not the key criticism made by the judge of the appellant’s evidence, more that she was clearly unable to give details as to her questioning. The references to her statement in all the interviews do not in fact take the matter further and elicit the detail which was not forthcoming and thus supporting of her credibility.
27. It was this account of the appellant’s detention which the judge clearly found seminal in his rejection of her claim. It was not merely the purpose of the Eritrean authorities reason for the detention, which the judge clearly understood, but as I state the detail therein.
28. In relation to ground (iii) and the criticism of the judge’s appraisal of the background information and relating to her employment, that the appellant had travelled to the UK in the past and was in employment for Kuwait for seven years did not necessarily mean that she was not prepared to fabricate a claim for asylum. There may be many reasons for the work terminating in Kuwait. The judge set out why he considered the ‘coincidences’ to be unbelievable, not least the timing of her application to visit the UK if she knew she had exited Eritrea illegally. The decision is clear in this respect and the judge did not accept the account the appellant gave because of the timings and coincidences as well as the context of the evidence.
29. The judge did accept that termination of her employment had occurred but did not accept that the appellant was not complicit in order to strengthen the basis of her claim and after rehearsing the evidence. The judge did dispute the reason for the termination and that is a credibility finding, which as Mr Nath pointed out is open to the judge and which he came to on a general review of the evidence. It cannot be said in relation to the judge’s findings of the sequences of events at 9.(iii) that they were outwith the findings of the judge who found them “striking and convenient coincidences”. Nor is this lacking in clarity; the judge set out why he did not accept the appellant’s explanation for or interpretation of the facts as they were presented.
30. As Mr Nath pointed out it is a clear sequence of events and is set out systematically.
31. Ground (iv) was a challenge that the judge had failed to consider the detention of the father. The judge clearly considered the evidence in the round and considered the

core of the appellant's claim. It is significant that although the appellant claimed that she was in limited contact with her father, there was no witness statement on file and nothing more than the appellant's general assertions, rather than specific evidence. I find that albeit the judge failed to mention the detention of the father this was not a material error of law in the light of the overall findings made.

32. Ground (v) in relation to the lack of findings on the appellant's travel itinerary, the judge confirmed at paragraph 8 that the appellant had indeed produced travel tickets to Eritrea as well as of her flight from Sudan to Kuwait. The judge at paragraph 8 clearly noted the submissions of the appellant's representatives such that she had delayed in her return to Kuwait from Eritrea and of her trip to Sudan and her travel itinerary and identified that he would bear this in mind when assessing the credibility of the evidence. That is what he did in the examination of the evidence in paragraphs 9 and 10.
33. It is clear that the judge at 9.(v) found that the appellant chose to leave Eritrea when she was in possession of a valid passport. The judge specifically found that the appellant's evidence that she was able to retrieve her passport through collaboration with an official to whom she was reporting was evidence which was wholly contrived and that she had not left Eritrea illegally.
34. The judge did specifically address the issue of the flight itinerary and stated that he was satisfied having regard to the "totality of the evidence that the appellant was not arrested and that this aspect of her claim was fabricated". It followed therefore, as he found, that her claim to have left illegally was also a fabrication. "She was in possession of a valid passport, there was no adverse interest by the authorities in her and she had no reason therefore to leave Eritrea in the manner that she claimed".
35. Indeed that someone has a flight itinerary via Sudan does not necessarily reveal its purpose, and the flight evidence was taken into account. As identified earlier in the decision the judge did not accept that the former employer and the appellant were not acting together.
36. The judge overall has given an adequacy of reasons and as **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC) sets out

'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge..'

That is the case here.

37. In response to the final ground (vi) and the findings in relation to the Facebook the judge c at 10(vii) stated that he did not accept that the Facebook page had come to the attention of the authorities and as pointed out in the reasons for refusal letter the Facebook page did not correctly spell her name. The appellant maintains that her name could be identified nonetheless. The judge did not accept that. The spelling is axiomatic in locating someone under Facebook and this does not connect the appellant with her true name. The argument in relation to pronunciation goes

nowhere. The judge's findings in this respect were therefore adequate on whether or not the appellant has posted anti-authority information.

38. As the judge pointed out she personally did not express any views on that page and she has not previously been the subject of any adverse interest in Eritrea and did not have a profile that the authorities would have an interest in.
39. On a careful reading of this determination I am not satisfied that there is any material error of law and the decision shall stand.

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

Helen Rimington

Date 16th June 2017

Upper Tribunal Judge Rimington