



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01260/2017

THE IMMIGRATION ACTS

Heard at Birmingham

On 7th August 2017

**Determination &
Promulgated
On 25th August 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE KING TD

Between

ML

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masih, Counsel, instructed by J D Spicer Zeb
Solicitors

For the Respondent: Mr D Mills, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims to be a national of Eritrea born on [] 1995. She entered the United Kingdom clandestinely on 3rd December 2014 and

when encountered claimed asylum shortly thereafter. That claim was refused by the respondent by a decision of 27th January 2017. The appellant sought to appeal to the First-tier Tribunal against that decision.

2. The appeal came before First-tier Tribunal Judge Asjad on 7th March 2017. In a decision promulgated on 31st March 2017 the appeal was dismissed in all respects.
3. The appellant claims to be in danger upon return to Eritrea on account of her Pentecostal faith.
4. In the course of the determination the First-tier Tribunal Judge found that she was not from Eritrea but was in reality from Ethiopia.
5. The chronology which the appellant gave essentially was that she was born in Mendefera in Eritrea and moved when she was 1 year old with her parents to Ethiopia for a better life. In February 2000 the family was deported back to Eritrea and in June 2002 her father was arrested by the Eritrean authorities. At the end of July 2002 she, her sister and mother travelled to Sudan on foot with the help of an agent. Thereafter she lived in South Sudan, then in Khartoum, then to Libya, then she arrived through Italy and France to the United Kingdom.
6. The Judge noted a number of photographs said to be taken by the appellant when she was in South Sudan. Enquiries revealed that certain of those photographs were taken in Ethiopia but the dates stamped on the photographs covered the period 2002 to February 2013, which did not correlate with the dates the appellant had given as to when she was in Sudan. The Judge, therefore, found that she had lied about where the photographs were taken and found rather that they were taken in Ethiopia. They were happy posed photographs. It cast doubt on whether she ever left Ethiopia because the last photograph was dated February 2013.
7. The appellant relies upon a document, which she says demonstrates that she is Eritrean but it does not verify her nationality, as it is a simple membership card purportedly issued in Sudan.
8. When questioned about her nationality in interview she exhibited a significant lack of knowledge in detail about Eritrea, particularly as to when it became independent.
9. The appellant gave conflicting evidence about the death of her father, saying in interview that he died in 2000, which was amended to 2002. Significantly, when a key witness, [SK], gave his testimony he said that the appellant and her parents came to Sudan in 2002.
10. At paragraph 16 the Judge says this:

"I checked this testimony three times with [SK] and he accepted that this was his evidence. When I clarified that it was the appellant's evidence that her father was in Eritrea and she claimed to have come to Sudan with her mother and sister, [SK] changed his testimony and said that by parents he meant sister and mother. But I do not accept that explanation as credible. As noted, [SK]'s testimony was checked by me three times as I wanted to clarify that his evidence was correct. He affirmed that that was his evidence and it was only when the anomaly was pointed out that he had tailored his evidence to fit in with the appellant's account. I find that the inconsistency about the date of her father's date, coupled with [SK]'s inconsistent testimony, leads me to the conclusion that the appellant's father was not killed in 2002 at all and that this aspect of her testimony is also fabricated."

11. It was the evidence that [SK] was the father of her second child. For reasons set out in paragraph 17, the Judge found the appellant's testimony about her involvement with [SK] full of inconsistencies, particularly when his statement was considered; particularly inconsistencies as to when they meet and indeed what relationship they continue to have. The Judge found that the appellant was in a greater relationship with [SK] than she sought to indicate. It is to be noted that at the hearing before me the appellant attended and had with her her children, who were also attended to by [SK].
12. The Judge for reasons set out in paragraph 17 did not accept that the appellant was truthful about the situation with her husband.
13. The Judge found also that the appellant's explanation why she spoke little Tigrinyan was also inconsistent, particularly so since her parents were of Tigre ethnicity. The Judge did not accept that she would not have learnt some of the language from them.
14. Cumulatively the Judge did not believe the appellant and particularly did not find that she lived in Eritrea but rather lived in Ethiopia and was an Ethiopian.
15. In the course of the analysis, in particular paragraph 16, the Judge said this: "[SK] is himself an asylum seeker and also claims to be Eritrean. On the evidence available to me I do not find that he has ever been to Eritrea and that he and the appellant lived in Ethiopia."
16. Permission to appeal to the Upper Tribunal was granted on the basis that that was a misunderstanding of the situation. [SK] was not simply an asylum seeker but had indeed been granted asylum. His residence card had been produced showing that it is valid until 10th October 2021, having been issued in the UK on 12th October 2016. He has refugee leave to remain. The document does not specify his identity but he obtained asylum on the basis of his contention that he was an Eritrean national who had entered the United Kingdom clandestinely on 3rd December 2014 and

claimed asylum. Coincidentally that is the date upon which the appellant claims to have entered the United Kingdom. He claims that they met up on the same lorry by coincidence. The Judge did not accept that explanation for reasons that have already been set out in paragraph 17 of the determination in particular.

17. There is the determination of First-tier Tribunal Judge Bell, promulgated on 4th July 2016, which noted that the appellant was accepted to be an Eritrean national who left the country illegally and who is of service age. He was also a low level member of a political opposition group. There was very little analysis of the claim in the determination, the appeal being allowed on that limited but accepted basis. It was the evidence of the appellant that she knew [SK] since 2002, when he was at his home in Sudan. They last saw each other in 2009 when she left for South Sudan. There is little indication from her evidence that he was ever in Eritrea and there is no mention at all that he was involved with political activity connected with Eritrea. His very brief witness statement indicates that he fled Eritrea to Sudan in 1998 but gives no detail thereafter as to what political activity, if any, he had in Eritrea such as to found the claim that he made. Rather he would seem to have been in Ethiopia or Sudan with the appellant since 2002. Indeed on 1st January 2016 the appellant gave birth to their son, conceived she claims as a result of an accident. He maintained that he was not in a relationship with her but continued to have regular contact. The Judge did not accept that the truth had been told about that relationship and the degree of contact that he and the appellant had had and over what period.
18. The fact that he obtained refugee status on account of his claim to be Eritrean without more, does not necessarily bind the authorities or the Judge to accept the reality of the situation. Many Albanians obtained refugee status by claiming they were from Kosovo. Rather, the Judge looked at the detail of his connection with the appellant and with other matters and concluded that neither he nor the appellant were telling the truth about their circumstances, such that there could be any reliance upon it. Even if [SK] was Eritrean it is entirely apparent that he has had little contact with the country since he left in the mid-1990s and in any event his association with the appellant was entirely focused upon Sudan according to his evidence or if the photographic evidence was correct, upon Ethiopia.
19. The decision of 27th January 2017 by the respondent sets out in considerable detail the challenges which are made to the credibility of the appellant. Those matters, which were highlighted by the Judge in the determination, were perfectly proper matters to raise in concern. Whether or not [SK] was an asylum seeker or a person with refugee status does not, as I indicated, found a material error in the analysis which was conducted by the Judge. The Judge was entitled to conclude that the appellant and he had not told the truth about their current relationship or their general situation and relationship before coming to the United

Kingdom and accordingly little weight could be given to his evidence or to hers.

20. Overall therefore I find that there is no material error of law. In those circumstances this appeal is dismissed. The findings of the First-tier Tribunal Judge remain intact, namely that the appellant's appeal is dismissed in relation to asylum, humanitarian protection and human rights.

Notice of Decision

The appeal stands dismissed. The original decision is affirmed

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 her or any member of her 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 24 August 2017

Upper Tribunal Judge King TD