IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000503

First-tier Tribunal No: PA/53055/2021
IA/13414/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 July 2023

Before

UPPER TRIBUNAL JUDGE OWENS

Between

MZG
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Bandegani, Counsel instructed by Wilson & Co Solicitors
For the Respondent: Mr Melvin, Senior Presenting Officer

Heard at Field House on 9 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hussain dated 29 October 2022 dismissing the appellant's appeal against the decision made by the Secretary of State on 23 June 2020 to refuse her protection and human rights claim.

Background

2. MZG is a citizen of Eritrea born in 1972. She arrived in the United Kingdom on 14 December 2018 and claimed asylum. Her claim was considered and refused by way of a decision taken on 23 June 2020, which is the decision under appeal.

3. It is the appellant's case that she risks persecution from the Eritrean authorities. Her husband was a colonel in the Eritrean Army who was arrested in 2006 and has been missing since then. She claims to have been detained approximately two weeks after he was arrested and questioned about him for a period of two weeks. She then claims that much later in 2015, her married daughter deserted from national service and fled Eritrea. In 2017, her son also deserted national service, and following this she claims to have been arrested and detained for six weeks. After this, she decided to flee Eritrea with her younger children, who also did not want to undertake national service. She claims that she left Eritrea illegally. She will be at risk because of her illegal exit, her perceived illegal exit and because of her perceived opposition to the regime.

4. The respondent accepts that the appellant is an Eritrean national and that her husband was a colonel in the Eritrean Army. It is however the respondent's case that the remainder of the appellant's claim is entirely lacking in credibility due to vagueness and inconsistencies in her account as well as some implausible factors.

The Decision of the Judge

5. Having set out the reasons for refusal in some detail, the judge made adverse credibility findings. This was on the basis that the appellant failed to mention her 2017 detention in her initial screening interview; that her account of being detained when her son deserted national service but not when her daughter deserted national service was inconsistent; and that her evidence that she did not obtain an Eritrean passport is not credible because the Secretary of State has a record of her applying for a US visa using an Eritrean passport. The judge found that as a woman aged over 30, that she would be able to obtain a visa to leave Eritrea legally and that she was not at risk of serious harm on return. The judge dismissed the appeal on protection and human rights grounds.

6. The grounds of appeal are lengthy but can be summarised as follows.

GROUND ONE: Error of fact

The judge made an error of fact when finding that the appellant had stated in her screening interview that she wanted to get asylum to "better herself and her kids".

GROUND TWO: Irrationality/ failure to take into account relevant evidence

The appellant gave an explanation for failing to mention her second detention at her screening interview. The judge did not take into account the appellant's explanation for the inconsistencies between the screening interview and the asylum interview.

GROUND THREE: Irrationality/ failure to take account relevant evidence

The judge failed to take into consideration the fact that the respondent had accepted the appellant's nationality and that the appellant's husband was a colonel in the Eritrean Army. Neither of these important accepted facts were considered in the round in the global assessment of the appellant's credibility.

GROUND FOUR: Irrationality/ illogicality

At [44] the judge reached two inconsistent conclusions. The judge held against the appellant that she was not the subject of any adverse interest when her daughter fled national service in 2015. The judge then found that it was highly implausible that she would have been detained for six weeks when her son fled national service. These conclusions are illogical and cannot stand.

GROUND FIVE: Irrationality/ speculation

At [44] the judge gave three speculative reasons unsupported by any evidence for making negative credibility findings as follows:

(a) that it was highly unlikely that the Ethiopian government would hold her husband in detention for so many years without a cause,
(b) that it is equally unlikely that the appellant would have no clue to what activities he was engaged in adverse to the government, and;
(c) that it must have cost the State to arrest and keep someone in that detention of a period of time.

GROUND SIX: Unfairness

The judge relied on the respondent's assertion that the appellant had attempted to obtain a US visa using an Eritrean passport. There was no respondent's bundle before the judge. The respondent did not put forward any supporting documentary evidence to support this assertion.

GROUND 7: Misapplication of the law

The judge failed to take into account properly the country guidance of MST and others (national services – risk categories) Eritrea CG [2016] UKUT 443 (IAC).

Permission to appeal

7. Upper Tribunal Judge Perkins granted permission to appeal on 23 March 2023.

Rule 24 response

8. The respondent produced a skeleton argument/rule 24 response addressing each of the grounds of appeal. In essence it is submitted that none of the grounds are made out. The majority of the grounds amount to an argument with the factual findings of the judge. In summary, it is said, the judge considered all of the evidence presented from both sides, found aspects of the appellant's evidence to be incredible or implausible and drew those threads together rationally to find that the appellant is not in need of international protection in the United Kingdom.

9. I will deal with the various submissions in my discussion of the grounds.

Ground 1

10. It is asserted by the appellant that the judge made an error of fact when he recorded at [43] that the appellant had stated in her screening interview that she wanted to get asylum "to better herself and her kids". The appellant asserts that this is not what she stated in her screening interview. As a result of this mischaracterisation of the appellant's evidence, the judge made negative credibility findings which adversely impacted on his assessment of the appellant's credibility as a whole.

11. [43] of the judge's decision reads as follows:

> "The respondent's doubt about the truthfulness of the appellant's claim mainly centres on the vagueness of her account. In oral evidence, the appellant admitted that she was not as forthcoming at interview as she was in her written statement. Her explanation for this is that when she is interviewed, she gets frightened. That could be a possible explanation, however, I am in agreement with the Home Office that the appellant's admissions in her screening interview at 3.1, when she said that she wanted to get asylum to better herself and her kids and that without her husband, she cannot manage financially, are highly damaging. Whilst at 4.1 of her screening interview, she did mention that her husband had been in jail for 13 years, she made no mention of being the subject of any adverse interest which came in her substantive interview,"

12. I am in agreement with Mr Bandegani that the judge has mischaracterised what the appellant said in the screening interview. In her screening interview at 3.1 she stated "I want to get asylum and to better myself and help my kids." I further note that in an asylum claim the decision maker must exercise anxious scrutiny and this includes recording the evidence accurately.

13. Mr Melvin submitted that the negative credibility findings of the judge at [43] are not solely based on the answers in the substantive interview or asylum interview but also arose from cross-examination and issues which materialised in the appeal. The judge was entitled to take into account her evidence of not being able to cope financially without her husband and her failure to mention in her screening interview that she was subject to adverse interest from the Eritrean authorities. He submits that [43] should be read in totality and not subject to "a narrow textual analysis ". He relies on Volpi v Volpi [2022] EWCA Civ 464.

14. My concern with Mr Melvin's submission is the judge's comment that the appellant's statement that she is seeking asylum to better herself is "highly damaging" when this is not what the appellant said. Further, having considered the record of the appellant's cross-examination, which is set out at [33], I can see nothing that indicates that she gave evidence that she came to the United Kingdom solely for better economic prospects. In her initial interview although she did not mention the 2017 detention, she did state that her husband was in prison. In her substantive asylum interview she elaborated on this and in her witness statement, which was part of the evidence before the judge and is set out at [26] to [28], she states that she does not have a trust in the Eritrean security and believed they would arrest her again. Her husband is missing, and she was worried about her children being enrolled in an open-ended national service scheme. The evidence before the judge was that the appellant had expressed a subjective fear of persecution.

15. I take judicial note of the authorities which state that people may have many mixed motivations for claiming asylum. In the context of this, the appellant's

comment that she found it difficult to manage without her husband is neither here nor there. It is perfectly plausible for an individual to claim asylum both on the basis that they fear persecution and on the basis that they would have better economic prospects in the country of refuge.

16. I am satisfied that the judge has mischaracterised the appellant's evidence in error and that this has made a material difference to the outcome of the appeal because this appears to be one of the major points taken against the appellant in terms of credibility.

17. I go on to address some of the further errors which it is submitted that the judge made in assessing credibility.

Ground 2

18. Both parties are in agreement that at the appellant's initial SEF interview she did not mention that she had been arrested in 2017 when her son fled national service. This was mentioned for the first time in her substantive interview. The grounds argue that the judge failed to take the correct legal approach to inconsistencies between a SEF interview and a substantive asylum interview in accordance with YL(Rely on SEF) [2004] UKIAT 145. This states that when inconsistencies between a screening interview and the evidence provided subsequently are evaluated:

> "it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the [interviewer] to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered".

19. Mr Bandegani submits that the judge failed to consider these factors when comparing the answers given by the appellant to the questions in her screening interview with those in the asylum interview. He submits that the reason why YL is important is because the SEF is not recorded and it is rare to have legal representation at SEF interviews so the usual safeguards are not there. In cross-examination the appellant explained that when she is interviewed that she gets "scared" and in her witness statement she stated that she misunderstood some of the questions. For instance, when she was asked if she had been detained in the UK or any other country, she stated that she answered in the negative because she thought the question was referring to countries other than Eritrea.

20. The judge at [43] took into account the appellant's explanation in her oral evidence and noted that this could be a possible explanation for omissions in the screening interview. He did not appear to take into account the explanation in the witness statement. However, the judge then went on to disregard that explanation because he found that her statement that she wanted to get asylum to better herself and her kids was highly damaging. I have already found that the judge's approach to this statement is unlawful.

21. I also take into account that there is no reference by the judge to the fact that the screening interview took place on the same day that the appellant arrived in the UK after a long journey from Ethopia to Dubia to a third country to the UK and

was held at Heathrow Terminal 5 from 8.45 pm to 9.35pm with two different interpreters interpreting over the telephone.

22. Mr Melvin submits that this ground is no more than a disagreement with a factual finding of the judge because the judge would have overlooked the appellant's "vagueness" but for his finding on the implausibility of her claimed arrest in 2017. However, this is not what the judge says at [43]. I find that the judge's previous error which I have set out at Ground 1 infects his approach to inconsistencies between the screening interview and the substantive interview and that he has misapplied the law in his approach to these inconsistencies, by failing to properly take into account the factors which may have impacted on the appellant's performance at the screening interview and the reasons she gave for failing to mention her detentions in her witness statement.

23. I turn to grounds 4 and 5 because these also relate to negative credibility findings.

Ground 4

24. It is submitted by the appellant that at [44] the judge reached two opposing conclusions in relation to the same factual scenario which is irrational. The judge first held against the appellant the fact that she was not the subject of any adverse interest in 2015 when her daughter fled national service which the judge notes is not consistent with the background evidence.

25. In the same paragraph the judge said:

> "what seems highly implausible is why she would have been detained for six weeks when her son fled national service. It must surely cost the state to arrest someone in detention of that period of time. I am at a loss to understand what they would have had to gain by keeping the appellant in detention when it was her son that they were interested in".

26. On the face of it the reasoning appears to be contradictory to the judge's earlier finding at [44]:

> "I would have been willing to overlook the vagueness in the appellant's answer. However, on the assumption that the appellant's husband is the subject of adverse interest, the Home Office background information shows that family members also attract adverse interest of the authorities. However, there was no explanation as to why the appellant was not the subject of any adverse interest when her daughter in 2015 fled national service. The explanation that has come up now was because the daughter was not living with her at the time that she was married. That may or may not be correct. What seems highly implausible is why she would have been detained for six weeks when her son fled national service".

27. Mr Melvin's submissions was that this reasoning was open to the judge, having considered the documents and heard oral evidence and that the findings do not reach the high hurdle of irrationality.

28. It is accepted by the respondent in the refusal letter by reference to the 2015 EASO report which is set out at [11] of the decision that it is externally consistent that family members are arrested if an individual is of interest. The judge's reasoning that the appellant's claim to be arrested after her son deserted is implausible, is therefore not in line with the background evidence. This is a misdirection in law. To the extent that the judge meant to say that the evidence

that lacked plausibility was the length of the detention, not the detention itself, this is not clear and that speculative approach is also flawed for the reasons set out below.

29. Further, both the appellant and the appellant's daughter, (who has been recognised as a refugee in the United Kingdom) gave evidence that the reason that the appellant was not arrested when her daughter fled national service was because the daughter was married, and was living in a separate household with her husband. The judge appears to discount this explanation or alternatively fails to make a finding as to whether this was a plausible reason on the basis that it was not plausible that the appellant was later arrested when it was her son who was of interest. I am in agreement that [44] is rather muddled and it is not really clear what the reasoning is.

30. I am satisfied that the judge erred by giving reasons which were not in line with the background evidence and appearing to take two contrary positions in respect of the same factual scenario.

Ground 5

31. It is submitted that in the same paragraph, that the judge has made several speculative conclusions. At [44] the judge says:

> "it is highly unlikely that the Ethiopian government would hold her husband in detention for so many years without there being a cause and it is equally unlikely that the appellant would have had no clue as to what activities he was engaged in adverse to the government..... What seems highly implausible is why she would have been detained for six weeks when her son fled national service. It must surely cost the state to arrest someone in detention of that period of time. I am at a loss to understand what they would have had to gain by keeping the appellant in detention when it was her son that they were interested in. "

32. It is established case law that a judge should not make speculations about how the authorities in another country would or would not behave. I have already noted that the background evidence accepted by the respondent is that family members are arrested which means that the last sentence in the paragraph quoted above is also inconsistent with the background evidence. I am also satisfied that the judge has speculated about why the authorities in Eritrea would arrest a family member, and why they would hold someone for so long because of the cost. It is pure speculation on the part of the judge as to how the authorities in Eritrea, which by all accounts is a repressive regime, in which arrests and detentions are common, would behave. The judge has used these speculative comments against the appellant to doubt her credibility.

33. I am satisfied that the judge's approach in using speculation in his reasoning is an error of law and had the judge not speculated he may have taken a different view of the evidence. I find that Ground 5 is made out.

34. My view is that the errors in Grounds 1, 2, 4 and 5 when taken together are sufficient on their own to undermine the entire decision. Had the judge not made these errors in respect of assessing the appellant's credibility, the judge may have come to a different view on the appellant's credibility and particularly in relation to her claim to have left Eritrea illegally.

35. On this basis I do not go onto consider the remainder of the grounds. I set aside the decision on the basis that it contains the material errors of law set out above.

Disposal

36. Mr Bandegani submitted that the appeal should be sent back to the First-tier Tribunal for a rehearing because no findings could be preserved. Mr Melvin said it was it was a matter for me. I am satisfied that it is appropriate in this appeal because of the extent of factual findings which need to be made, to depart from the normal course of action and to remit the appeal to the First-tier Tribunal with no findings preserved to be reheard in its entirety.

Notice of Decision

37. The making of the decision of the First-tier Tribunal involved the making of an error of law.

38. The decision is set aside in its entirety with no findings preserved.

39. The appeal is remitted to the First-tier Tribunal to be heard de novo in front of a judge other than First-tier Tribunal Judge Hussain.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 July 2023