



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11770/2016

THE IMMIGRATION ACTS

Heard at Manchester  
On June 26, 2018

Decision & Reasons Promulgated  
On June 29, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS SELAM ESTIFANOS  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard, Solicitor

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order.
2. The appellant claimed to be an Eritrean national. She entered the United Kingdom clandestinely on April 13, 2016 and claimed asylum. The respondent refused her protection claim on October 12, 2016 under paragraphs 336 and 339F HC 395.
3. The appellant lodged grounds of appeal on October 26, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal Heatherington (hereinafter called "the Judge") on September 19, 2017 and in a decision promulgated on September 25, 2017 the Judge refused the appeal on all grounds.

4. The appellant appealed this decision on October 9, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Doyle on November 20, 2017 finding it arguable the Judge had arguably erred:
  - (a) In finding the appellant was an Ethiopian national the Judge did not consider either the Eritrean Nationality Proclamation submitted by the respondent or the guidance in ST (Ethnic Eritrean-nationality-return) Ethiopia CG [2011] UKUT 00252 (IAC) and failed to give adequately supported reasons for the findings in paragraph 51 of the decision.
  - (b) By not demonstrating any consideration was given to section 55 of the Borders, Citizenship and Immigration Act 2009 when considering article 8 ECHR.
5. The matter came before me on the above date and I took submissions from both representatives.
6. Prior to taking submissions I asked the representatives whether the reference in the permission to appeal to the Eritrean Nationality Proclamation was correct as the only document I had on file was the Ethiopian Nationality Law Proclamation. Mr Howard was unable to assist as he had not represented the appellant personally at the previous hearing, but Mr Tan confirmed that it was the latter document that had been handed up.
7. I accessed the Eritrean Nationality Proclamation No.21/1992 which identified those persons who would be entitled to Eritrean nationality. I reminded the parties of the contents of this but pointed out that I could find no reference anywhere in the original record of proceedings that there had been a submission made that the appellant could benefit from Eritrean nationality if either of her parents were Eritrean nationals.

### **SUBMISSIONS**

8. Mr Howard adopted the grounds of appeal but indicated that his submissions would concentrate on the first three grounds. He submitted that the Judge had erred by failing to make a finding as to whether the appellant's parents were Eritrean nationals. He submitted it was incumbent upon the Judge to do this based on the decision of FA (Eritrea - nationality) Eritrea CG [2005] UKIAT 00047. The reasons given by the Judge for rejecting the appellant's claim to be Eritrean were lacking and inadequate. He submitted the Judge had only considered the letter from the Eritrean Community in Lambeth and more care should have been given to this issue.
9. Mr Howard further argued that the Judge erred in making a finding at paragraph 51(i) of the decision because no reasons were given for this conclusion. Whilst he accepted the Judge had made a finding that she held and used an Ethiopian passport this was not the same as saying she was an Ethiopian national. The burden of proving she was an Ethiopian national fell upon the respondent and the Judge erred in his approach.
10. Finally, Mr Howard submitted that having acknowledged that the appellant had claimed to have delivered papers for the OLF he submitted this would place her at

risk in Ethiopia and the Judge should have considered this when assessing whether there were any insurmountable obstacles to her being returned to Ethiopia. However, he accepted that if these points had no merit then the Judge's approach to article 8 was probably not challengeable.

11. Mr Tan submitted that the Judge had carefully considered all the evidence and had made adverse credibility findings about the appellant and had rejected her claim, in its entirety, that she was an Eritrean national or that she had lived in Eritrea as she had claimed. The Judge had never been asked to consider the Eritrean Nationality Proclamation No.21/1992 in so far as her parents were concerned. He submitted that based on the adverse findings there was no error on this ground. The Judge also found she was an Ethiopian national having stated that she had held and used an Ethiopian passport and at paragraph 49 he had rejected her claim. Having made these findings, he submitted the decision under article 8 ECHR was properly reasoned and there was no error in law.

### FINDINGS

12. The grounds of appeal have challenged the Judge's approach to the appellant's nationality and there was a separate challenge to the Judge's article 8 decision.
13. This was an appeal in which the Judge had documents and oral evidence from both the appellant and a witness, Abraham Musazgi. The Judge noted at the outset that nationality was a key issue in this appeal and in particular the Judge recorded that the appellant insisted that she had been born in Eritrea albeit had lived most of her life outside of Eritrea. The Judge acknowledged that if she was Eritrean her claim was likely to succeed because of national service issues.
14. With regard to the appellant's claim to be Eritrean she relied on the evidence of Mr Muzazgi who stated that he was Eritrean and that she had been attending his church. The Judge considered his evidence but attached little weight to the evidence save that he accepted she had been attending a Pentecostal church since June 2016. The Judge ultimately did not accept her claim to be a Pentecostal Christian and whilst the grounds of appeal challenged this decision, Mr Howard did not pursue it at today's hearing. Having read the Judge's decision I am satisfied that the findings made were open to the Judge and even if he had raised this as a ground of appeal I would have rejected it.
15. The second piece of evidence that she was Eritrean was a letter from the Eritrean Community in Lambeth. The Judge examined the document at some length and attached no evidential weight to it. He rejected the conclusion because no satisfactory indication of what specific enquiries or tests have been carried out were given, no one attended to give evidence and there were no witness statements from anybody connected with the organisation. The Judge identified discrepancies in the document and concluded no weight should be attached to this document. Those conclusions were open to the Judge.
16. The only other evidence to support the appellant's claim she was Eritrean was her oral evidence. To counter this the Judge had evidence that she had both held and

used an Ethiopian passport. The Judge rejected her claim to be Eritrean concluding she was an economic migrant determined to come to the United Kingdom and that her credibility was damaged by her failure to claim asylum in France.

17. Mr Howard argued that the Judge should have expanded his consideration of her nationality beyond those findings. He referred to the Tribunal decision of FA and whilst I note this decision I struggle to see how it assists the appellant in her appeal. This current appeal was based on the appellant's claim that she was Eritrean but the Judge rejected this claim. He was not asked to investigate her heritage.
18. Her claim was based on the fact that she was born in Eritrea and having rejected this and having evidence that she had both held and used an Ethiopian passport it was clearly open to the Judge to reject, as he did, her claim to be Eritrean. In fact, the Judge went further and found the appellant to be a mountebank.
19. With regard to the finding at paragraph 51 that she was an Ethiopian national the Judge had before him the refusal letter and he was satisfied that she had been issued with an Ethiopian passport that she had used. Mr Howard submitted that using an Ethiopian passport did not mean the passport was genuine. It is clear from any reading of the decision that the Judge rejected the appellant's claim relating to her nationality (and religion) and accepted what was advanced by the respondent both in the refusal letter and at the hearing.
20. The Judge did not accept her claims to have delivered papers for the OLF at the instigation of her stepmother and gave a reason for this in paragraph 48 and at paragraph 49 he concluded that she had not discharged the burden of proof. Taking all the evidence together I am satisfied the Judge was entitled to make the finding he did about her Ethiopian nationality.
21. Permission to appeal was given on the basis section 55 of the Borders, Citizenship and Immigration Act 2009 was not mentioned in the decision. The Judge's assessment of article 8 clearly considered the best interests of the children and the failure to mention section 55 does not negate the decision.
22. Mr Howard accepted that his argument on this issue only had merit if it could be demonstrated there had been an earlier error with regard to nationality.
23. The Judge took time to consider various parts of the appellant's claim and ultimately rejected that claim giving detailed reasons. I do not accept there is any error by the Judge in this decision.

### DECISION

24. There is no error in law and the original decision shall stand.

Signed

Date 27/06/2018



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

I make no fee award as I dismiss the appeal.

Signed

Date 27/06/2018

A handwritten signature in black ink, appearing to read 'SPAL', with a horizontal line underneath it.

Deputy Upper Tribunal Judge Alis