



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

Appeal Number: HU/02139/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 March 2019**

**Decision & Reasons Promulgated
On 02 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

ENTRY CLEARANCE OFFICER - WARSAW

Appellant

and

**ZENASH [G]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Cunha, Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

Introduction

1. This is an appeal by the respondent against the decision of the First-tier Tribunal, and in particular Judge of the First-tier Tribunal Sills, to allow the appellant's appeal against the respondent's decision made on 17 January 2017 to refuse an application for entry clearance made on 1 September 2016. This had subsequently been subject to an Entry Clearance Manager's decision to uphold that decision on 13 April 2017.

History of the appeal proceedings

2. The appellant appealed to the First-tier Tribunal against the Entry Clearance Officer's refusal to accept that the appellant qualified under the family reunion provisions of the Immigration Rules, specifically under paragraph 352A of those Rules, and under Article 8 of the European Convention on Human Rights (ECHR) for leave to enter the UK (the settlement application/appeal). This had been on the basis that the appellant had formed a private or family life in the UK with a Mr [T], an Eritrean national, who had been granted refugee status in 2015. The appeal against that decision came on for hearing in Birmingham on 5 February 2018. Judge of the First-tier Tribunal Sills allowed the appellant's appeal following that hearing. In reaching his decision, the judge decided to consider a draft decision in parallel appeal proceedings against a decision by the respondent to refuse an application by the appellant for asylum and humanitarian protection in the UK (the asylum application/appeal). This was made by the appellant on entry into the UK on or about 9 June 2017. The appellant claimed to be a Pentecostal Christian having left Eritrea in about 2003. Although the respondent did not originally accept that she was Eritrean, importantly, the respondent later accepted that she was a Pentecostal Christian.
3. It seems that the appeal against the respondent's refusal of asylum, dated 4 December 2017, came on for hearing before Judge Perry at Birmingham on 25 January 2018, i.e. only ten days before the hearing of the appeal to the FTT in this appeal on 5th February 2018.
4. Judge Sills, when he came to consider the settlement appeal decided to look at the draft decision of the First-tier Tribunal reached following the hearing by Judge Perry on 25 January 2018. Having consulted an attendance note prepared by Mr Corden, who represented the respondent at the hearing of the asylum appeal on 25 January 2018, it was decided that the settlement appeal ought to be allowed. At the hearing on 5 February 2018, at which the respondent was represented by a Miss Owen and the appellant was unrepresented and made no appearance, Miss Owen indicated that she had no objection to the Judge Sills having sight of Judge Perry's draft decision before reaching his decision. Judge Sills did not record the fact that Judge Perry's decision was a draft. However, he said (at paragraph 7) that as Judge Perry had accepted the appellant's claim that she was a refugee her settlement appeal ought to be allowed. But, it is also important to note that by the date that the judge came to decide the settlement appeal, the parentage of the child that the appellant had with Mr [T], had been ascertained to be that of the appellant and Mr [T].

The appeal to the Upper Tribunal

5. The respondent subsequently appealed Judge Sills' decision, pointing out in the grounds that although the relationship between the appellant and

the sponsor had been accepted, the First-tier Tribunal had materially erred by relying on a decision which had not yet been promulgated. It was respectfully submitted that it was perverse for the First-tier Tribunal to accept a decision which may become vulnerable to change and yet still rely on it as a starting point. The error was material as it led the First-tier Tribunal to find that family life existed, but Appendix FM under the “ten-year partner route” was not satisfied and/or that the family life the public interest outweighed that family life in any event. Permission to appeal was sought on that basis.

6. On 14 May 2018 Judge Mailer decided that it was arguably premature and inappropriate for Judge Sills to rely on Judge Perry’s finding that there was a genuine and subsisting relationship with Mr [T] and their child, when it was not clear at that time that the appellant would indeed be granted refugee status. The grounds stated correctly that the judge had relied on an unpromulgated decision. It is said that to do so was perverse, and in the light of the premature reliance on that decision there was an arguable error which warranted the further consideration by the Upper Tribunal. Judge Mailer gave permission to appeal to the Upper Tribunal because the errors of law were at least arguable.
7. Miss Cunha submitted to the Upper Tribunal that there was an error of law in Judge Sills’ decision insofar as he was concerned with a decision which had not yet been promulgated. Furthermore, he had taken into account a decision in an asylum case which was not necessarily determinative of the settlement appeal. No good reason had been shown for departing from the Entry Clearance Officer’s decision. However, further enquiries were made before I reached my decision. As a result of those enquiries Ms Cunha was able to provide a copy of Judge Perry’s decision which I have now had an opportunity to read. It appears that although the respondent had not originally disputed the appellant’s Eritrean nationality, he had had accepted her Pentecostal Christianity. However, there has subsequently been a finding in her favour in that Judge Perry has accepted her Eritrean nationality also. That decision was promulgated on 15 March 2018 having been date stamped by the judge 26 January 2018 and appears to be in substance the same or very similar in its conclusions as the draft version referred to by Judge Sills.

Conclusions

8. Now that Judge Perry’s decision has been promulgated, it can be seen that the appellant has been granted refugee status with effect from 15 March 2018. Furthermore, she lives with Mr [T] and their child. His paternity is not now disputed, as a result of the DNA evidence referred to, nor is her status as a refugee in issue, there having been no appeal against Judge Perry’s decision. In the circumstances, it is not now argued before the Upper Tribunal that there is a material error of law in the decision of the First-tier Tribunal. The procedural error, in considering a draft decision

which had not been promulgated, has not caused any injustice to either party to this appeal.

Decision

9. In the circumstances I find that that there is no material error of law and have decided to dismiss the respondent's appeal to the Upper Tribunal and leave in place the decision of the First-tier Tribunal.
10. No anonymity direction was made by the First-tier Tribunal and I make no anonymity direction.

Signed

Date 29 March 2019

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT
FEE AWARD**

No fee award was made in this case and I make no fee award

Signed

Date 29 March 2019

Deputy Upper Tribunal Judge Hanbury