



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

Appeal Number: PA/11814/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 19th March 2019**

**Decision & Reasons Promulgated
On 11 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**JAH
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr. McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. Although the First-tier Tribunal (“FtT”) did not make an anonymity direction and no application is made before me, the appeal concerns a claim for asylum and international protection, and in my judgement, it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. JAH is granted anonymity throughout these proceedings. No report of these proceedings shall

directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant appeals against the decision of First-tier Tribunal (“FtT”) Judge Warren promulgated on 1st November 2018, dismissing the appellant’s asylum and human rights appeals.
3. Permission to appeal was granted by Deputy Upper Tribunal Judge Taylor on 10th January 2019. In doing so the Judge noted that “... *It is arguable that, given that the appellants son is a refugee in Sudan, and that the judge made no concrete finding about whether the husband had been involved in a coup attempt (paragraph 27), this is a matter which should have been given more attention by him...*”. Permission to appeal was granted on all grounds. The matter comes before me to consider whether or not the decision of FtT Judge Warren involved the making of a material error of law, and if the decision is set aside, to re-make the decision.

The background

4. The appellant is a national of Eritrea. She arrived in United Kingdom on 29 July 2015, having been granted leave to enter as an overseas domestic worker in a private household, for a period of six months, on 11th June 2015. She claims that in August 2015, she ran away from her employer. On 18th September 2015, she made a claim for asylum. That claim was refused by the respondent for the reasons set out in a decision dated 5th November 2017. It was that decision, that was the subject of the appeal before the FtT.
5. The appellant first left Eritrea in 1995, when she was about 32 years of age to work as a Maid in Bahrain. She returned to Eritrea in 1997, and remained there until she travelled to Dubai in 2000 to work as a Maid with a family. The appellant moved with her employer to Abu Dhabi in 2003, and between 2003 and 2015, she travelled extensively with her employer between Abu Dhabi, Jordan, Lebanon, London and Sudan. When she

arrived in the United Kingdom in July 2015, that was the seventh occasion upon which she had been granted leave to enter the UK.

6. There were a number of strands to the claim for international protection made by the appellant. The claim made by the appellant and the evidence before the Tribunal is set out at paragraphs [9] to [23] of the decision. FtT Judge Warren refers, at [8], to there being significant inconsistencies in the account relied upon by the appellant in her witness statement, the asylum interview, and in her evidence before the Tribunal. The findings and conclusions of the FtT Judge are set out at paragraphs [24] to [32] of the decision.
7. The Judge noted, at [24], that the appellant last left Eritrea legally in 2012 with the benefit of an exit visa. The reasons are set out at paragraphs [25] and [26] of the decision. The Judge rejected the appellant's account that she had spoken out against the Eritrean government amongst close friends, in 2012, whilst she was in Eritrea. The Judge also rejected the appellant's account that her husband had taken part in the attempted coup in 2013 or that he had been arrested and detained. The Judge states, at [27], that *".. Her evidence is unreliable and there is no credible evidence to suggest that she would be seen as guilty by association with her husband, even if he were involved."* In so far as the appellant's son is concerned, the FtT Judge noted that there is no evidence that the appellant's son left Eritrea in 2013 as the appellant claims, although it is clear that he has spent at least 12 months in a refugee camp in the Sudan. At paragraph [29], the Judge states:

"... Even then, the appellant was not there and so she cannot possibly be sure. There is no evidence beyond that of the appellant (whose evidence on other issues in this case has proved inherently unreliable) that she helped to pay for him to escape from Eritrea, and that even if she did, the authorities in Eritrea would be aware of that. She had, after all, been sending money for his keep for many years. The appellant is thus almost entirely reliant on her own account, which is based on what she says others have told her. Even on the lower standard of proof, and bearing in mind the extensive inconsistencies in her accounts, I cannot say that it is reasonably likely that she would suffer at the hands of the authorities in Eritrea, for assisting her son to evade the draft."

8. At paragraph [30] of the decision, the FtT Judge considered the appellant's claim that if she were compulsorily returned to Eritrea from the UK now, she would be seen by the authorities as a failed asylum seeker. The FtT Judge considered that claim by reference to the country guidance set out in MST and Others (national service – risk categories) Eritrea CG [2016] UKUT 00443 (IAC) noting that the Tribunal found that failed asylum seekers per se, are not at risk. The appellant had left Eritrea in 2012 with her Eritrean passport and an exit visa. She is not subject to national service. She would not, on the facts here, therefore be at risk upon return.

The appeal before me

9. The appellant contends in the grounds of appeal that the FtT Judge erroneously failed to make a finding on a relevant factual matter. That is the appellant's political opinion. The grounds of appeal are somewhat incoherent, but helpfully in his submissions, Mr Holmes distilled the three critical matters relied upon by the appellant. First, he submits, the FtT Judge failed to make a finding as to the appellant's political beliefs, and the risks the flow from that. Second, the appellant's political profile is relevant to the overall assessment of the credibility of the appellant's account. Third, the FtT Judge did not properly address the risk associated with the appellants association with her family, and in particular, her son, who is now outside Eritrea.
10. There was no doubt that the appellant had previously been a member of the EPLF. The respondent had considered the appellant's account that she was an active member of the EPLF and her claim to have fought in numerous armed battles. At paragraph [54] of the respondent's decision dated 5th November 2017, the respondent stated "*... it is noted that the EPLF is now the ruling party of Eritrea, albeit under the different name of the People's Front for Democracy and Justice. It is therefore accepted that you fought for the EPLF, however as they are now the ruling party of the country, it is rejected that you would face a risk on return due to your previous activities within the organisation.*". The respondent went on to

reject the appellant's account that she has come to the adverse attention of the Eritrean authorities because of her subsequent outspoken anti-government views. The question for the FtT Judge was whether the appellant now has anti-government views, such that she has come to the adverse attention of the current regime. To that end, the appellant claimed that in 2012, whilst on a visit to Eritrea, she had expressed concerns about the government to a group of people she knew as a fellow fighters from the past. She believes that the views expressed by her, were passed to the authorities.

11. The FtT Judge considered the evidence relied upon by the appellant in support of her claim that in 2012 she spoke out against the government, amongst friends, bringing her to the adverse attention of the authorities. The Judge rejected the appellant's claim and having considered the various other strands to the appellant's claim, concluded at paragraph [28] as follows:

"I do not consider therefore that it is reasonably likely that the claimants (*sic*) alleged fear of persecution in Eritrea, for her political opinion is well founded."

12. In my judgement, the FtT Judge did properly considered the appellant's political profile. The background to the claim was not in issue, and it was in my judgement open to the FtT Judge to reject the appellant's account that she has been an outspoken critic of the current regime for the reasons given.
13. The assessment of credibility is always a highly fact sensitive task. The FtT Judge was required to consider the evidence as a whole. In assessing the credibility of the appellant and the claim advanced by her, the Judge was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. Some of those factors may be more relevant in an individual case than others. At paragraphs [25] to [27] of the decision, the Judge gives reasons

for rejecting the account given by the appellant, having noted at [8], there to be significant inconsistencies in the appellant's account between her interviews, witness statement, and in her evidence before the Tribunal.

14. At paragraph [7], the Judge confirms that he has not made findings without first looking at all the evidence in the round, but disregarding the conclusions as to whether the appellant has been a victim of trafficking. Having made that clear, there is no reason for me to believe that he did not adopt that approach. What follows at paragraphs [24] to [28] are findings that, in my judgement, arise from a combination of inconsistencies in the account, a lack of detail or sufficient explanation, and matters that appeared to the Judge, to be implausible. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted, and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision.
15. I am however satisfied that the FtT Judge erred in his consideration of the risk upon return by reference to the appellant's association with her son. The appellant claims that her son escaped to Sudan. At paragraph [29], the Judge states "*There is no evidence that the appellant's son left Eritrea in 2013, although it is clear that he has spent at least the last 12 months in a refugee camp in the Sudan*". The Judge considered the appellant's account that she had aided his move to Sudan. Mr Holmes accepts that there was no evidence of any financial payments made by the appellant to her son, to help his escape from Eritrea.
16. Mr Holmes however draws my attention to the respondent's 'Country Policy and Information Note - Eritrea: National Service and illegal exit (October 2016). Paragraph 14.3 of that note refers to family members being subjected to detention, interrogation and financial penalties to induce the conscript to return and to pressure the family member, to ensure the return to duty. He submits that Dr John Campbell also referred, at paragraph 11 of his report, to family members being punished, where

drafted leaders and deserters remain untraceable. Mr Holmes submits that the background material that was before the FtT Judge, establishes a risk of return by reference to the fact that the appellant's son illegally left Eritrea, that is entirely independent of the claim made by the appellant to be at risk upon return because of her own profile.

17. The Judge plainly had concerns as to the credibility of the appellant but it is not entirely clear from what is said at paragraph [29] of the decision, whether the Judge considered the risk upon return by reference to the circumstances surrounding the presence of the appellant's son in Sudan, and the risk identified in the background material arising from this, regardless of whether the appellant helped to pay for him to escape.
18. In those circumstances, the appeal must be re-determined. I have carefully reflected as to the appropriate course for that redetermination. There will plainly need to be a consideration of the evidence and findings made as to circumstances surrounding the presence of the appellant's son in the Sudan. I note that the evidence before the FtT was limited in that respect. Although, I have found there to be no merit in the other grounds of appeal advanced by the appellant, in my judgement, given the nature of the issues in the appeal, the appropriate course is for the appeal to be remitted for hearing afresh with no findings preserved.
19. The appeal is accordingly remitted for re-hearing afresh, with no findings preserved.

Decision:

20. The decision of the First-tier Tribunal contained a material error of law and is set aside.
21. The appeal is remitted for hearing afresh.
22. No anonymity direction was made by the FtT. As this is a protection claim, it is appropriate that a direction is made.

Signed

Date

2nd May 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal and remitted the matter for re-hearing before the FtT. In any event, no fee was paid and there can be no fee award.

Signed

Date

2nd May 2019

Deputy Upper Tribunal Judge Mandalia