



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09931/2014**

THE IMMIGRATION ACTS

**Heard at North Shields
On 8 April 2015
Prepared on 14 April 2015**

**Determination Promulgated
On 21 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**TK
(ANONYMITY DIRECTION)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard, Counsel instructed by Fountain Solicitors
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant entered the United Kingdom illegally on 18 June 2014 and claimed asylum on the basis that she was a Pentecostal Christian and a citizen of Eritrea. That application was refused on 13 November 2014, and in consequence a removal decision was made in relation to her, which identified both Eritrea and Ethiopia as possible removal destinations.

2. The Appellant appealed to the Tribunal against those immigration decisions and her appeal was heard on 23 December 2014, and dismissed by decision of Judge Buchanan, promulgated on 21 January 2015.
3. The Appellant duly applied to the First Tier Tribunal for permission to appeal, and that application was granted by Judge Kamara on 6 February 2015 on the basis the Judge had arguably failed to apply current country guidance for Eritrea and Ethiopia. The Respondent filed a Rule 24 Notice dated 19 February 2015. Neither party has formally applied for permission to rely upon further evidence pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules 2008.
4. Thus the matter comes before me.

Pentecostal Christian

5. It was not in dispute before the Judge that the Appellant was a Pentecostal Christian. As such she would be at risk of persecution on the basis of her religion if, as a citizen of that country, she were returned to Eritrea, but not if, as a citizen of Ethiopia she were returned to Ethiopia.

Nationality

6. It is accepted by both parties that although the Respondent had placed the claim in issue, the Judge accepted that the Appellant was a citizen of Eritrea [6.28]. He went on to find that she would as a result be at risk of persecution on the basis of her religion were she to be returned to Eritrea [6.29].
7. What the Judge did not do was make any finding that the Appellant was a citizen of Ethiopia, and the Respondent had advanced no positive case to that effect before him. It is not entirely clear why he went down this path, save that this was apparently the way in which the submissions made on behalf of the Respondent were made to him, but the Judge then appears to have gone on to conclude that the Appellant would face no risk of harm in Ethiopia as a Pentecostal Christian, and thus to dismiss the appeal on the basis she could in safety be returned to that country.

Error of Law?

8. It is accepted before me that the Judge's approach was flawed. The Judge concluded that the Appellant was a citizen of Eritrea as she claimed to be, and that as a Pentecostal Christian she would be at real risk of persecution upon return to that country. The Respondent had advanced no positive case to the effect that she was a citizen of Ethiopia, (whether or not she held dual nationality) and the Judge made no such finding. Thus the appeal ought to have been allowed on asylum grounds.

9. In consequence the parties are agreed that I should set aside the decision upon the asylum appeal and remake it so as to allow the appeal on that ground.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 21 January 2015 did involve the making of an error of law in the decision to dismiss the asylum appeal that requires that decision to be set aside and remade. I remake that decision so as to allow the asylum appeal.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 14 April 2015

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant 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.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 14 April 2015