



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/07044/2015**

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 26 February 2016**

**Decision & Reasons  
Promulgated  
On 17 March 2016**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**GELILA TEKELE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr J Kingham, Presenting Officer  
For the Respondent: Ms M Wilson, Iris Law Firm

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Caskie promulgated on 25 August 2015 in which he allowed the respondent's appeal against the decision of the Secretary of State on 8 April 2015 to remove her from the United Kingdom consequent upon a refusal of her asylum claim.

2. The respondent is a citizen of Eritrea who was born on 6 June 1991. Her case is that she left Eritrea in 1995 at the age of 4 to live in Ethiopia with her father. She was then deported from Ethiopia to Eritrea in 2001, travelled to Sudan in 2003 where she lived with an aunt for seven years and then travelled to Dubai via Ethiopia. She worked as a housemaid until 2014 and then travelled via Portugal and France to the United Kingdom arriving on 20 October 2014.
3. The Secretary of State accepted that the respondent is a citizen of Eritrea but did not accept that she was suffering disproportionate or harsh treatment as a result of leaving Eritrea when she was aged 12; or, that she would be viewed as a traitor [27]; and that, based on the latest country guidance and the Danish Fact-Finding Mission Report that she could return to Eritrea without experiencing any problems, by paying the two percent Diaspora tax and sending a letter of apology to the Eritrean Embassy [28]. She did not accept that she would suffer persecution on account of failing to complete national/military service and to exiting the country illegally. The respondent did not in any event accept that she left illegally in 2003 [34]. It was also considered that her removal to Eritrea would not be in breach of Articles 2, 3 or 8 of the Human Rights Convention.
4. On appeal, the Judge found that:-
  - (a) the respondent had provided reliable evidence [15] and he accepted her history [16];
  - (b) in assessing the risk on return [16] the starting point was the country guidance case **MO (Illegal exit - risk on return) Eritrea CG [2011] UKUT 00190**;
  - (c) the Eritreans would not consider that the respondent is married [17] and she would thus be exempted from military service;
  - (d) much of the evidence the Secretary of State relied upon to show that the authorities now had changed their practice comes from sources the reliability of which had been called into question [18] and even taking that evidence at its highest, the concerns regarding the durability of change remain [18] and he was not satisfied that new practice is yet established;
  - (e) there was no evidence before him sufficient to overturn the conclusions of the Tribunal in **MO** with regard to the risks on return of those who had exited illegally and/or are liable to military service, stating:

“the evidence produced is open to significant question and criticism from resources such as UNHR and I bear in mind in assessing their view the guidance of the Supreme Court in **R (EM (Eritrea)) v SSHD [2014] UKSC 12** at paragraph 71 I give significant weight to those concerns and therefore limited weight to the impugned evidence.”

- (f) applying the guidance in **MO** the appellant would at risk of serious harm if returned to Eritrea.
5. The respondent sought permission to appeal on the grounds that inadequate reasons were given for rejecting the Danish FFM Report and although there had been criticisms offered the judge has not engaged in an analysis whatsoever of what was contained in the report nor of the criticisms.
  6. The grounds also contend that the country guidance is in the process of considering the change in circumstances raised by the Danish FFM Report and the evidence should not simply be dismissed out of hand.
  7. On 18 November 2015 Upper Tribunal Judge Bruce granted permission stating:-
    - “1. The Danish report is a contentious piece of evidence, for reasons other than those identified by the First-tier Tribunal. However where there is a new country guidance constituted to consider this report, and I give permission for this reason alone.”
    2. There is no merit in ground 2. The point made by the First-tier Tribunal is that at her age she would be eligible for draft on return to Eritrea. And that there is a risk that she would be perceived as having sought to avoid it: see paragraph [18].”
  8. It is not disputed that in this case the judge followed Country Guidance about which the Court of Appeal held in **SG (Iraq) v SSHD** [2012] EWCA Civ 940 at [46]-[47]:
    46. The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.
    47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so.
  9. Given this binding authority, it is to say the least remarkable that the Secretary of State’s grounds do not properly address why, it is said, that the judge erred in following Country Guidance.
  10. Whilst it is correct that a country guidance case has been constituted in respect of Eritrea, substantive hearings have yet to take place and the decision may not be handed down for several months from now. The fact that a country guidance case is awaited is not a basis on which permission

to appeal should be sought. The fact that a country guidance decision is awaited fails to identify any error of law in the decision.

11. In reality in this case the grounds challenging the judge's findings with respect to the Danish FFM evidence are a "reasons challenge" dressed up as a failure to resolve conflicts of fact or opinion, a challenge even more difficult to establish given that it is an attempt to persuade a judge not to follow established Country Guidance. It is, in effect, a perversity challenge which is far from made out.
12. The reasons given by Judge Caskie for rejecting the evidence put forward by the Secretary of State, which directly contradicts that analysed carefully by the Tribunal in giving guidance in **MO**, is adequate. In the context of the significant and serious criticisms levelled at the evidence relied upon by the respondent by UNHCR, the existence of which criticism is not disputed, and its nature is a sufficient basis under which to reject the respondent's evidence. That is because in this case it goes to the reliability of the sources of the evidence. It cannot be argued that the judge erred in following existing Country Guidance in these circumstances.
13. The judge was also entitled to note that **MO** was the later in a series of cases all of which were consistent about the behaviour and attitudes of the Eritrean regime. It was open to him to note that the changes which the respondent claims have taken place are recent and, combined with the criticisms levelled against the sources of which this evidence relies. Accordingly, for these reasons, I am not satisfied the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

### **SUMMARY OF CONCLUSIONS**

1. 1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 7 March 2016

Upper Tribunal Judge Rintoul