



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13741/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

On 26 October 2017

**Decision & Reasons
Promulgated**

On 24 November 2017

Before

UPPER TRIBUNAL JUDGE LANE

Between

**BNA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Worthington

For the Respondent: Mrs Pettersen, Senior Presenting Officer

DECISION AND REASONS

1. The appellant BNA, is a female citizen of Eritrea who was born in 1987. She entered United Kingdom on a spouse visa on 2 June 2012. She claimed asylum in May 2016 but her claim was refused by a decision of the respondent dated 25 November 2016. The appellant appealed to the First-tier Tribunal (Judge Turnock) which, in a decision promulgated on 11 May 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are several challenges to the judge's decision. First, the appellant complains that the judge's reasoning was too brief. Further, the appellant asserts that the judge failed to make findings in respect of the evidence of a witness (H). The appellant also asserts that the judge failed to have proper regard to a letter sent to the appellant by her mother and drew adverse inferences from the letter as regards the appellant's credibility as a witness which should not have been drawn. Secondly, the appellant submits that the judge has not, on the basis of the factual matrix which he had established, completed an assessment of the risk of return to this appellant. Unusually, the appellant claims to have left Eritrea legally for medical treatment and not as a consequence of having been released from military service. The appellant claims that the judge assumed that, because the appellant had been given an exit visa for medical treatment, she would not in any event face risk on return. The fact remains, however, the appellant is of military service age and could be re-drafted into the Eritrean Army. Such a possibility was acknowledged by the Upper Tribunal in country guidance case *MST and Others (national service - risk categories) Eritrea CG [2016] UKUT 00443 (IAC)* at head note [11]:

While likely to be a rare case, it is possible that a person who had exited lawfully may on forcible return face having to resume or commence national service. In such a case there is a real of persecution or serious harm by virtue of such service constituting forced labour contrary to Article 4(2) and Article 3 of the ECHR.

3. As regards the first ground of appeal, I find it has no merit. The judge carried out a thorough analysis of the evidence. He has set out in some detail the evidence given by the witness. The witness had left Eritrea some four years before the appellant herself left the country. The judge dealt with the discrepancy in the evidence given by H which did not match that evidence given by the appellant herself [40]. The judge acknowledged at [40] that the evidence of H "supported the evidence of the appellant." It is difficult to see what else the judge might have said about the evidence of H given that she could provide little assistance concerning the account and circumstances of the appellant after H herself had left Eritrea. I find that the judge has not erred in his treatment of the evidence of the witness.
4. The judge dealt with the letter from the appellant's mother to the appellant at [37]. The judge was entitled to make findings in respect of the physical nature of the letter which he found to be "remarkably well preserved" for a letter which it was claimed had been written in 2009. At [54], the judge gives sustainable and cogent reasons for rejecting the authenticity of the letter. The challenge to the judge's findings regarding the letter represent nothing more than a disagreement with those findings.
5. I note that there is some uncertainty as to whether or not the appellant is still married. What is clear, however, is that the appellant has children with her in the United Kingdom who are British citizens. In practical terms, it seems unlikely that she will be returned to Eritrea in the foreseeable future. However, as regards her asylum appeal, it is necessary to deal

with the hypothetical situation in which she is returned and whether or not she would be thereby exposed to a real risk. It is at this point that the judge's decision becomes problematic. Looking at the Record of Proceedings, it appears that a submission was made that, notwithstanding the fact the appellant has left Eritrea legally, she is still of military service age and may be exposed to risk on return. That assessment has not been made by the judge. Having established the factual matrix, the judge should then have considered risk on return by reference to that matrix. Because he did not do so, his decision is incomplete. In consequence, I find that the judge has erred such that the decision should be set aside. However, in this particular case I find that, save for the challenge to the decision as regards risk on return, the judge's decision is sound. I see no reason to interfere with his findings of fact, including his findings as regards the credibility of the evidence. I direct, therefore, that the decision is returned to the First-tier Tribunal and to Judge Turnock so that he may hear submissions in respect of risk on return and complete his decision. There will be no need for him to hear any evidence in respect of those matters upon which he has made findings.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 11 May 2017 is set aside. All other findings of fact are preserved. **The appeal is remitted to the First-tier Tribunal (First-tier Tribunal Judge Turnock) for that judge to remake the decision.**

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 12 November 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 12 November 2017

Upper Tribunal Judge Lane