



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/24575/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 September 2019

Decision & Reasons Promulgated  
On 19 September 2019

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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 her or any member of her 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.

**Representation:**

For the Appellant: Mr M Afzal, representative from Global Migration Solutions  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a challenge by the Appellant, a child of Eritrean nationality, against the decision of First-tier Tribunal Judge Nixon ("the judge"), promulgated on 28 May 2019, by which he dismissed her appeal against the Respondent's decision of 12 November 2018, which in turn refused her application for entry clearance to join her mother ("the sponsor") in the United Kingdom.
2. The essence of the application was as follows. The sponsor had left Eritrea in 2008 and the Appellant was residing with her grandmother thereafter. The Appellant then went to Germany to live with her father. Over the course of time the father, who had separated from the Appellant's mother years previously, decided to remarry. For a number of reasons, the father was not prepared to continue to care for the Appellant in light of his developing personal circumstances. It was said that, as a consequence, the Appellant was to be sent to "Africa" to reside with her paternal uncle.
3. Before the judge it was quite properly accepted that the Appellant could not show sole responsibility in her case, with reference to paragraph 297(i)(e) of the Immigration Rules and TD (Paragraph 297 (i)(e): "sole responsibility") Yemen [2006] UKAIT 00049. However, it was contended that there were "serious family or other considerations" making the Appellant's exclusion from the United Kingdom undesirable, with reference to paragraph 297(i)(f) of the Rules. It was said that the Appellant's best interests would clearly not be served by what was in effect an enforced return to Eritrea from Germany and ongoing separation from her mother.
4. It is now accepted by the Respondent (through Mr Bramble's fair and realistic position at the hearing before me) that the judge failed to deal with the basis upon which the "serious family and other considerations" issue was put to him, namely a return to Africa. Mr Bramble's position was entirely appropriate. It is clear that the judge simply failed to address this issue at all and did not carry out any best interests assessment in respect of the Appellant. Mr Bramble did not suggest that the reference to "Africa" related to any country other than Eritrea, but noted that there has been no judicial finding in this particular point.
5. The judge's decision must be set aside.
6. In terms of disposal, the default position should of course be that I would remake the decision in this appeal based on the evidence before me and/or in light of any further evidence provided under an application under Rule 15(2)(a) of the Upper Tribunal's Procedure Rules.
7. There has been no application for additional evidence in this matter, an omission which in my view is regrettable given the particular circumstances of this case. In my view Mr Bramble makes the valid point that the judge's decision does not contain a sufficient factual matrix for me to go on and remake the decision at this stage.
8. In light of this and the various other issues which need to be reconsidered, I take the view, exceptionally, that this case must be remitted to the First-tier Tribunal.

9. The issues for consideration on remittal shall be as follows:-
- (1) precise identification of the country to which it is proposed by the Appellant's father to send her and live with her paternal uncle;
  - (2) whether there are "serious family or other considerations" within the context of paragraph 297(i)(f) of the Rules, with specific reference to the Appellant being sent to the country identified, and whether this would be contrary to her best interests;
  - (3) if the country is indeed Eritrea, issues surrounding military/national service must be considered as part and parcel of the best interests assessment. So too must questions of living arrangements and overall safeguarding.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and it is set aside.**

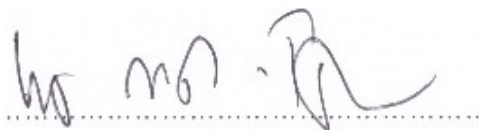
**The appeal is remitted to the First-tier Tribunal.**

**Directions to the First-tier Tribunal**

- 1) This appeal is remitted to the First-tier Tribunal (Birmingham hearing Centre) to be reconsidered, subject to what is said in this error of law decision;**
- 2) The remitted appeal shall not be heard by First-tier Tribunal Judge Nixon;**
- 3) In light of the particular circumstances of this case, the remitted hearing shall be listed as a matter of urgency.**

**Directions to the parties**

- (1) The Appellant's representatives shall file and serve a consolidated bundle of all evidence relied upon no later than 14 days from the date that this error of law decision is sent out to the parties;**
- (2) Any further evidence relied upon by the Respondent shall be filed and served no later than 7 days before the remitted hearing.**



Signed

Date: 18 September 2019

Upper Tribunal Judge Norton-Taylor