



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

Appeal Number: PA/01286/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 19 August 2019**

**Decision & Reasons Promulgated
On 09 October 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**H M H
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Islam, Solicitor from Fountain Solicitors

For the Respondent: Ms E Groves, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant has claimed to be a refugee and publicity might create a risk.

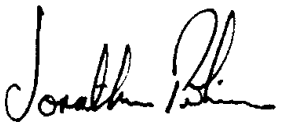
2. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent refusing her international protection.
3. This is the second time that there has been a decision in the First-tier Tribunal on the appellant's claim for asylum. I have to say that it was only when I was able to see and read the decision of First-tier Tribunal Judge Mayall promulgated on 21 December 2015 that I was able to understand properly the decision that is before me. I have reflected on this. It would have been better if more had been said about that decision but for reasons that I hope will become apparent I do not accept that there has been any error of law in the decision that I have to consider.
4. In the instant case First-tier Tribunal Judge V A Cox directed herself correctly that her starting point was the findings of the judge in the earlier decision. It was implied but not absolutely spelled out that First-tier Tribunal Judge Mayall did not believe that the appellant had left Eritrea illegally. This is important. In very broad terms, persons who leave Eritrea illegally risk persecution in the event of their return but those who leave legally normally do not.
5. There has been no successful criticism of Judge Mayall's decision on the information before him. Judge Cox had additional evidence. Essentially it was in the form of a letter from Eritrea that was said to show that the authorities were looking for the appellant. For lawful reasons, Judge Cox did not find that letter to be genuine. The problem with the letter is that although the Judge was satisfied it had come from Eritrea she was not satisfied about its provenance within Eritrea. It was handwritten and stamped with a round ink stamp but there was no evidence to authenticate the stamp and no obvious way of telling if the stamp was an official stamp and/or if it had been used officially. There was nothing that gave it any authority and no expert evidence to assist. The Judge's conclusion that it was not a document that was reliable was entirely open to her and her decision to maintain the decision that the appellant had not left Eritrea unlawfully was plainly consistent with that.
6. Although I have read the grounds and the reasons for giving permission when the decision is read with the decision of First-tier Tribunal Judge Mayall those criticisms fall away. The decision was not criticised for lack of clarity but for lack of authority and the authority is that the point had already been decided against the appellant and had not been undermined by later evidence because that evidence was not reliable.
7. The claim on Article 8 grounds is rather different. The appellant relied on her relationship with her children, both girls, who were born in November 2016 and June 2018 respectively. They are small children who have not established a significant private and family life in the United Kingdom on their own account and they would be returned to a country where it can be assumed that they would live safely because their mother's claim for international protection has been rejected.

8. It is regrettable that there is not a clear finding about their best interests. Given that one of the children has a potentially serious health problem and that they both have some kind of contact with their father (although that appears to be intermittent) it would be surprising if their best interests did not lie in staying in the United Kingdom with their mother but staying with their mother is not an option but only the best interests of a child are a primary consideration they are not determinative. The mother has not established a right to remain and there is nothing to suggest that the children should be allowed to remain and their mother benefit from that. They are not British citizens and they have not established a strong private and family life. There is simply no material error in the assessment of their rights and the impact of their rights, if any, on the appellant's claim.
9. It follows therefore that I see no material error and I dismiss the appeal against the First-tier Tribunal Judge's decision.

Notice of Decision

The appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 8 October 2019