Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02042/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 11th July 2019	**On 19th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

HE
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Wood (LR)
For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Alis, heard on 12th April 2019, and promulgated on 16th April 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Ethiopia, and was born on 1st January 1998. She appealed against a decision of the Respondent, dated 29th January 2019, refusing her application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that she fled Ethiopia on her own and travelled to Sudan. Her father had opposed the government. He had been asked to hand over his land. This land he had inherited from his father and grandfather. He refused. The soldiers from the government began firing shots. One of the shots killed her uncle. Her father killed one of the government officials who had come onto the land. Her father then fled. The Appellant's mother also left with the remaining children. The Appellant did not now know whether her father had been involved in politics. She knew very little. Her relatives advised her to go to Sudan. She fled to Sudan. She worked as a housemaid there for seven years. She was forced to do this work. The money she was paid was collected by the agent on a monthly basis. When she left she was given 3,000 guineas. She believed that she was exploited whilst working in Sudan. This was subsequently confirmed by the competent authority who concluded that the Appellant had been a victim of human trafficking (see the judge's determination at paragraph 30). In Sudan also, the Appellant was raped. She fell pregnant. She gave birth to her daughter on 8th February 2016. When she left and travelled through Italy and France she did not claim asylum there. She now fears return to Ethiopia. She fears that she will be re-trafficked (see paragraph 35 of the determination). Moreover, she would be returning as a single parent with no qualifications and one would find it difficult to support herself and a child. She would be at risk not only of domestic servitude but also of sexual exploitation. She would also be forced to have her daughter circumcised. She herself had been circumcised as a child (paragraph 35).

The Judge's Findings

4. The judge observed that in assessing the Appellant's credibility he had taken into account that she was 10 years of age when she left Ethiopia. This was accepted by the Respondent Secretary of State. Also accepted by the Respondent Secretary of State was the fact that there had been previous concession that the Appellant had been trafficked in both Sudan and Libya by being required to work as a "modern day slave" (see paragraph 56 of the determination). Nevertheless, the judge concluded that the fact that the Appellant had been trafficked did not necessarily mean that she would be at risk. This is because "there are significant steps being taken to address the issue and I do not accept that returning this Appellant, even as a single mother, would mean that there is a heightened risk of trafficking. The evidence does not support this argument" (paragraph 75).

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge's reliance on a US State Department Report (at paragraph 72 of his decision) was characterised as "post-hearing" research. It is true that this US Report was in the Appellant's bundle. The judge had himself correctly identified it at paragraph 71 of the determination. Moreover, the Appellant's bundle made it clear that it was an abstract from a report that dealt with trafficking in various countries. However, the judge then proceeding to look at this on the basis of "post-hearing" research meant that the Appellant had not been given the chance to comment upon this, and this amounted to a procedural unfairness to the Appellant. Second, the judge was wrong to have considered that, in examining the four tiers of trafficking risks, the judge had regard to the fact that Ethiopia was ay tier 2, just as Iceland and Ireland were, because an attempt to equate the position in Ethiopia with that in Iceland and Ireland was an irrelevance as far as the Appellant was concerned. She was not claiming to be at risk in either of these other two countries but only to be at risk in Ethiopia.

7. For his part, Mr Bates, appearing on behalf of the Respondent Secretary of State, stated that the judge's engagement in "post-hearing" research did not amount to an error of law because what he was doing was simply looking at a document that the Appellant had herself put into the proceedings at page 99 of the Appellant's bundle. The difficulty was that this was simply an extract. What the judge had set out to do was to examine it more fully. This he was entitled to do in the privacy of his chambers by undertaking his own research. Secondly, the judge was entitled to conclude that the Appellant would not be at risk in Ethiopia. This is because the Appellant had not been trafficked from Ethiopia. The evidence shows that she had been trafficked from Sudan. This was a third country. The return now was to Ethiopia. The judge had concluded that "there are significant steps being taken to address the issue" in Ethiopia (paragraph 75). On the evidence, the judge was entitled to come to this conclusion. Third, the Appellant had been trafficked as a 10 year old. She was now returning as an adult. She would be a person who was altogether much more aware of the risks and would be able to protect steps to guard herself against the risk of re-trafficking. Fourth, the suggestion that her child may be subject to FGM was not in the original grounds. It was asserted subsequently and was not properly argued.

8. In reply, Mr Wood submitted that he had himself represented the Appellant at the hearing below. He can quite categorically say that there was evidence, and submissions made by him before the Tribunal below, that the Appellant was trafficked in Ethiopia, because there was complicity by her parents in enabling her to leave that country. Otherwise, it would not be possible for a 10 year old to leave Ethiopia and go to Sudan. The judge makes a passing reference to this when he observes that "she went on to explain she was sent away because of fear she could be targeted as the

eldest child ...” (paragraph 61). That, submitted Mr Bates, was a reference to the parents sending the child away themselves. If the Appellant were now to be returned to Ethiopia, she could not expect any help from her parents who had themselves been instrumental in despatching her away from Ethiopia. The objective evidence showed that in Ethiopia there was a practice of parents actually being complicit in the trafficking of their own children.

Error of Law

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows. First, although it is a case that I do not accept, notwithstanding Mr Wood’s valiant attempts to persuade me otherwise, that the judge’s undertaking of a “post-hearing” research was something that amounted to procedural unfairness, I do find that there was a failure to factor in the modern slavery component of the claim by the Appellant into her present condition, where she was with a child, having been raped in Libya, and would be facing return to Ethiopia. The reason why there is nothing in the first point of the judge having undertaken “post-hearing” research is that this was a report that the Appellant had herself put into issue before the Tribunal and it was only to the judge’s credit that he had made time available to undertake a more fulsome research into this report with a view to understanding what it meant to place Ethiopia in “tier 2” of the four categories of risks.

10. However, there is substance in Mr Wood’s submission that the Appellant had been trafficked from Ethiopia because there was complicity in this on the part of her parents. Ethiopia is a source country. There are scarce economic opportunities in that country. There is dire poverty. Families compel their children to leave. As the grounds of application made clear “families continue to play a major role in financing irregular migration, and may force or coerce their children to go abroad or to urban areas in Ethiopia for employment”. The ground made clear that “girls from Ethiopia’s impoverished rural areas are exploited in domestic servitude and commercial sex within the country ...”. But even if this is not so, the judge’s acceptance that there was a problem in Ethiopia meant that this had to be factored into the wider aspect of the claim, namely, that the Appellant was a victim of human trafficking, who was now a lone parent with a small child.

11. The judge observes (at paragraph 75) that “whilst I accept there is an ongoing problem in Ethiopia, I am satisfied that there are significant steps being taken to address the issue ...” (paragraph 75). However, in this regard, what the judge did was to say that he was not satisfied that this “would mean that there is a heightened risk of trafficking” (paragraph 75). The requirement that there be a “heightened risk” is one that is not commensurate with the requirements of the law in refugee cases.

12. Second, given the judge's acceptance (at paragraph 15) that there was evidence from a competent authority in the UK that the Appellant was a victim of modern slavery who had been trafficked in Sudan, the judge ought (at paragraph 56) to have factored into the matrix of the considerations there that the Appellant as a victim of modern day slavery, was now with a child, as a result of having been raped in Libya.

13. The judge only states that "in assessing the credibility and reliability of the Appellant's evidence, I have taken into account that she was 10 years of age ..." and that she had been trafficked (at paragraph 56). There is no account there taken of the fact that the Appellant is now with a child.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Alis, pursuant to Practice Statement 7.2(b) of the Practice Statement.

15. An anonymity direction is made.

16. This appeal is allowed.

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.

Signed Date

Deputy Upper Tribunal Judge Juss 15th August 2019