



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11631/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 12th June 2015

Decision & Reasons Promulgated
1st July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

ZINASH WONDAFRASH TADES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor of Morden Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 23rd March 2015 Judge of the First-tier Tribunal N Osborne gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal C Mather in which she dismissed the appeal on all grounds against the decision of the

respondent to refuse asylum, humanitarian and human rights protection to the appellant claiming to be an adult citizen of Eritrea.

2. The decision of Judge Osborne summarises the grounds of application. It was contended that the judge was wrong to attack the appellant's credibility on the basis that she had stated in interview she was a Protestant when she was of the Pentecostal faith which was a form of evangelical Protestantism. Additionally it was contended that the judge had provided inadequate reasoning for finding the details of the appellant's escape from detention incredible, that she was not a Pentecostal Christian and for failing to take into consideration the evidence of the witness attending the appellant's church in the United Kingdom. It was also argued that the judge had given inadequate reasons for rejecting the appellant's claim to have left Eritrea illegally or to have perceived to have left the country illegally on the basis covered by country guidance notably *MO (Illegal exit – risk on return) Eritrea CG [2011] UKAIT 190*.
3. Permission to appeal was granted by Judge Osborne on the basis that the judge's assessment of the appellant's credibility in the context of her stated religion gave rise to arguable errors in an important part of the appellant's case. All grounds were, however, stated to be arguable.
4. Although not referred to in the permission decision, the grounds also contended that the determination contained wording that was virtually identical to paragraphs in another of the judge's First-tier decisions. It was also contended that the judge's consideration of private life under paragraph 276ADE of the Immigration Rules is flawed because inadequate reasons were given for concluding that there would be no significant obstacles to the appellant's reintegration into Eritrean society. It was also submitted that the judge did not consider the persecutory risk that the appellant would face on return to Eritrea as a lone female and as a failed asylum seeker, generally, having regard to the appellant's medical condition and the respondent's Operational Guidance Note.
5. Mr Howard confirmed that the appellant relied on the grounds. In relation to the findings about the appellant's Pentecostal faith he drew attention to paragraph 16 of the decision which indicated that someone from the appellant's church had attended to support the appellant's claims. He also requested that, if errors were found, a re-hearing before the First-tier Tribunal would be appropriate in view of the fresh findings of fact that would be required. He also handed to me objective material which could be used in that respect including BBC and UNHCR reports.
6. Mr McVeety reminded me that the Secretary of State had submitted a response although that was limited for the reasons which it contains. He thought that the judge had given reasons in all areas where it was stated she had not. As to the appellant's faith no qualified minister from the appellant's claimed church had attended to give evidence and this was recorded by the judge. He also reminded me that the judge's reference to the appellant's statement that she was a "Protestant" was an issue raised in paragraph 20 of the refusal letter and not dealt with by the appellant. Whilst he conceded that the judge's findings in relation to country guidance were not lengthy he asserted that they were not wrong. He also questioned how the judge could have made any different decision in relation to the appellant's private life in the United Kingdom in view of the short period of time she had been here.

Conclusions

7. The allegation that the judge's material findings, as specified in the grounds, are inadequately reasoned is without foundation. Whilst it might be arguable that the judge made too much of the appellant's initial statement, in screening, that she was a Protestant by religion when she later claimed to be of the Pentecostal faith, this was an issue which the appellant did not cover in her evidence even though it had clearly been raised in the respondent's refusal. Whilst post-hearing information is produced to suggest that the Pentecostal faith is a form of Protestantism it does not mean that the judge could not refer to the differences in terminology in the appellant's evidence when reaching credibility findings. It was certainly open to the judge to conclude that it was significant that a person claiming to be of the Pentecostal faith as a basis for persecution would not refer specifically to her faith when asked at the outset about her reasons for claiming asylum. It is also clear that the inconsistency in evidence in this respect was only one of several material reasons given by the judge for concluding that the appellant's claims could not be believed.
8. The judge was not in error in pointing out that the appellant had said in substantive interview that her husband was a Pentecostal Christian yet in other evidence (identified in paragraph 15(w) of the decision) that he was not. It was also open to the judge to comment on the significant difference in dates given in 2005 for the police raid on a secret prayer meeting and also to conclude that the appellant would not have been able to escape from arrest at that meeting if police had specifically attended to apprehend the individuals there. The judge also points to the appellant having no difficulties with the authorities or police following the earlier incident when, despite claims to the contrary, the appellant appeared to be leading a relatively normal life by attending hospital for surgery and working two days a week as a hairdresser. The judge was also entitled to regard the appellant's claims about her mode of entry into the United Kingdom as not credible for the reasons given. These are all material reasoned findings entitling the judge to draw unfavourable conclusions about the appellant's credibility.
9. Additionally, in relation to the appellant's claimed faith, the judge was entitled to draw attention to the fact that the minister from the Agape Church in Stoke-on-Trent did not attend the hearing to support the appellant's claim to be a Pentecostal Christian. The judge was evidently aware of the appellant's witness evidence and correctly referred to the principles and guidelines set out in the decision of *Ali Dorodian (01/TH/1537)*. There was no supporting evidence from the church minister, as opposed to just a congregation member, to explain how the minister reached the conclusion that the appellant was a genuine Pentecostal Christian. As to the appellant's claimed illegal exit from the country the judge was not wrong to refer to the relevant part of the decision of the Upper Tribunal in *MO* which concludes that illegal exit cannot be assumed where, as in this case, the appellant had been found to be wholly incredible in relation to the main elements of her claims. *MO* also makes it clear that failed returned asylum seekers are not at real risk of persecution.
10. The judge's consideration of human rights issues is relatively brief although it does concentrate on private life issues under paragraph 276ADE of the Immigration Rules and the stage process under *Razgar* [2004] UKHL 27. The judge's consideration of these issues does not make specific reference to the appellant's state of health as someone who had undergone heart surgery in Eritrea in 2006 for which she was

taking medication. However, it is not evident that health was an issue raised before the judge and it is certainly not referred to in the grounds of appeal before the First-tier Tribunal. The judge was right to refer to the precariousness of the appellant's immigration status in the United Kingdom when assessing private life on the limited information available for someone who, at the date of hearing, had only been in the United Kingdom for about twenty months.

11. Finally, the allegation that the judge has used similar wording, when considering risk on return, to that used in an earlier decision relating to another Eritrean national does not establish that the judge did not apply her mind specifically to the circumstances of this appeal when, quite evidently from her findings of fact, she did. The anxious scrutiny required in consideration of asylum appeals is clearly applied.
12. For the reasons given I conclude that the decision of the First-tier Judge does not show a material error on a point of law and shall stand.

Notice of Decision

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

Anonymity was not requested before me or before the First-tier Tribunal nor do I consider it appropriate in this case.

Signed

Date

Deputy Upper Tribunal Judge Garratt