



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

Appeal Number: AA/11723/2015

THE IMMIGRATION ACTS

Heard at Stoke

On 14th June 2017

**Decision & Reasons
Promulgated
On 03rd July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[M T]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Ma, Solicitor

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was born on [] 1987. She claims to be Eritrean but is believed by the Secretary of State to be Ethiopian. The Appellant had applied for asylum in the United Kingdom and asked to be recognised as a refugee claiming that she had a well-founded fear of persecution in Eritrea

on the basis of her religion. That application was refused by the Secretary of State in a Notice of Refusal dated 17th August 2015.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal PJM Hollingworth sitting at Nottingham on 2nd November 2016. In a decision and reasons promulgated on 29th November 2016 the Appellant's appeal was dismissed on all grounds.
3. Grounds of Appeal were lodged to the Upper Tribunal on 9th December 2016. Those grounds contended that the judge failed to give adequate reasons as to why he had dismissed the appeal under Article 8 particularly bearing in mind that the Appellant's husband had shown that he had international protection in the UK and evidence was produced to show that he was the biological father of his children.
4. On 1st February 2017 Judge of the First-tier Tribunal Adio granted permission to appeal. Judge Adio noted that the judge had found the Appellant was from Ethiopia and had accepted that her husband was from the Sudan and that it followed that there was an arguable error of law as to the adequacy of the Article 8 findings made by the judge. On 16th February 2017 a holding Rule 24 response was served by the Secretary of State.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed solicitor, Miss Ma. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.
6. I am aware that dependent upon this appeal is the Appellant's child [BA] (born on [] 2015). As a preliminary issue to this hearing I am advised that the Appellant gave birth to a second child [HA] on [] 2016.

Submissions/Discussion

7. Miss Ma submits that it was incumbent upon the judge to give due consideration to the fact that the Appellant's husband had been granted refugee status and that he had produced at court a biometric card to this effect. Further he had produced a birth certificate to show he was the father of [BA] and a wedding certificate which is to be found in the Appellant's bundle. She submits that in the circumstances the judge had failed to give due consideration to Section 55 of the 2009 Act and to give full and proper consideration to the appeal pursuant to Article 8 of the European Convention of Human Rights. In such circumstances she asked me to find that the decision was unsafe, to find that there was a material error of law therein and to remit the matter back to the First-tier Tribunal for rehearing.
8. In response Mr Bates submits that the provision of the birth certificate and evidence of the Appellant's spouse's refugee status is irrelevant. Those

factors are not in dispute and that the judge found that there was no reason why the Appellant and her family could not return to Ethiopia.

9. It is accepted, he points out, that the Appellant's husband has refugee status and therefore it is acknowledged that he could not return to the Sudan.
10. He emphasises that in the Grounds of Appeal the finding by the First-tier Tribunal Judge that the Appellant was Ethiopian was not challenged and that the Appellant had failed to discharge the burden of proof to the contrary. He submits that the judge set out his findings and found that the Appellant does have status and a right to reside in Ethiopia and that the judge has given proper consideration to the best interests of the child on the basis that the child will be returning with her parents. He submits that the Appellant has not discharged the burden of proof that the Appellant cannot carry on family life in Ethiopia and it is immaterial that Section 55 has specifically not been mentioned particularly as the child is not a qualifying child and therefore the test is not one of reasonableness.
11. In brief response Miss Ma submits that the principle of international protection should also apply to the child and that it is not reasonable to expect the Appellant's husband to leave the UK.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

14. This appeal turns entirely on whether or not there is a finding of a material error of law as to the manner in which the judge has addressed the Appellant's appeal under Article 8 of the European Convention of Human Rights. It is relevant to note that the Appellant does not challenge the finding of the First-tier Tribunal Judge that she is a citizen of Ethiopia. I am satisfied having heard submissions and considered the documents that there is no material error of law in the First-tier Tribunal Judge's decision. The relevant paragraphs of the decision are paragraphs 61 to 67. As a starting point the rejection of the Appellant's credibility is not challenged. However the judge heard the Appellant's husband's testimony. He accepts that he is from the Sudan and accepts that he has been granted asylum on account of his fear of persecution in the Sudan. The judge does not expect the Appellant or her husband to return to Sudan. The decision that has been made is that they can return as a family to Ethiopia and despite the judgment indicating that there were difficulties in producing relevant documentation the documents mentioned before in this decision were available for the judge and he made findings at paragraph 67 that it had not been established on the basis of the factual matrices that family life could not be led outside the United Kingdom.
15. In particular the judge found that there was no reason why the Appellant's husband could not go to Ethiopia. It is quite simply bad law for Miss Ma to submit that merely because the Appellant's husband has been granted asylum because of a fear of persecution in Sudan that he cannot return with the Appellant to Ethiopia. Further it is accepted that the child is not a qualifying child and would be returning with her parents. There is no suggestion, quite properly, that the family unit would in any way be broken up.
16. This is a judge who has looked carefully at the documents and at the position of the family generally and has made findings there would not be a breach of Article 8 both within the Rules and outside the Rules in returning the Appellant and her family to Ethiopia. Those findings are well-reasoned. For the reasons given above the submissions of Miss Ma do not find any favour with the Tribunal and certainly do not show that there is a material error of law in the decision of the First-tier Tribunal Judge. In such circumstances the Appellant's appeal is dismissed and the decision of the First-tier Tribunal is maintained.

Notice of Decision

The decision of the First-tier Tribunal disclosed no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal is maintained.

No anonymity direction is made.

Signed D N Harris

Date: 28th June 2017

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed D N Harris

Date: 28th June 2017

Deputy Upper Tribunal Judge D N Harris