



IAC-AH-DN-V1

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

Appeal Number: AA/12224/2015

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice Decision & Reasons  
Belfast Promulgated  
On 26 July 2017 On 21 August 2017**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**M A  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr S McVeety, Home Office Presenting Officer

For the Respondent: Miss McIlveen instructed by Nelson-Singleton Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Farrelly, promulgated on 14 September 2016, allowing her appeal against the decision made on 7 September 2015 to refuse to grant her asylum and/or humanitarian protection. She was, however, granted leave to remain outside the Rules.

2. It is accepted that the respondent is an Eritrean national. It is also accepted that she was born in Ethiopia to Eritrean parents and that she and they were forced to leave Ethiopia and duly returned to Eritrea. It is accepted also that she left to avoid the draft and that she has a well-founded fear of persecution in Eritrea.
3. The respondent is married to an Ethiopian national who has been recognised as a refugee and granted asylum on 2 July 2014. The Secretary of State was satisfied that the applicant is an Ethiopian national given that she had applied for and had been granted a visa to the United Kingdom on 14 March 2007 using an Ethiopian passport. The respondent's case is that this passport had been obtained unlawfully by her husband upon payment of a bribe.
4. When the matter came before Judge Farrelly, he accepted the respondent's account and found that she would be at risk on return to Eritrea. He accepted also that she had obtained the Ethiopian passport by bribery but, having directed himself in connection with ST (Ethnic Eritrean - nationality - return) Ethiopia [2011] UKUT 00252 noted that the respondent had not gone to the embassy to see if she would be entitled to that nationality and that although he had not had the benefit of detailed argument about her entitlement to Ethiopian nationality [33] and he had no submission as to the effect of her marriage to a European national, he considered it had not been demonstrated that she was entitled to an Ethiopian nationality. He also considered that the respondent could not return to Ethiopia due to she and her husband having children although they are now separated.
5. The Secretary of State sought permission to appeal on the grounds that the judge had: -
  - (1) Misdirected himself in law in that he had reversed the burden of proof wrongly requiring the Secretary of State to prove that the respondent was Ethiopian; and,
  - (2) had erred in discounting the relevance of a possible return to Ethiopia on the basis that the respondent's husband had been recognised as a refugee from Ethiopia, this matter having been considered and decided in the respondent's favour by the grant of leave to remain, this being irrelevant to the question of the risk to her given that she had not claimed any risk on account of her husband's political activities.
6. I heard brief submissions from both parties. It was accepted that the judge had erred in reversing the burden of proof. It was accepted that it was for the respondent in this case to show that she was not entitled to Ethiopian nationality.
7. Mr McVeety did, however, concede that none of the findings of fact made by the judge were disputed.

8. The factual situation in this case is not the same as that in ST or for that matter MA (Ethiopia) [2009] EWCA Civil 289. It is not in dispute that the respondent is an Eritrean citizen or that she was forced to leave Ethiopia. The Secretary of State's case is that she has not shown that she would not now be able to avail herself of Ethiopian nationality. I accept that the judge did err in reversing the burden of proof in this case requiring the Secretary of State to show that the respondent was entitled to Ethiopian nationality. It is evident both from MA (Ethiopia) [2009] EWCA Civil 289 that it was for the respondent to have taken steps to approach the embassy and to show that she was not a national and was not entitled to the national of Ethiopia. I am therefore satisfied that the decision involved the making of an error of law.
9. I am not, however, satisfied that this error was material. As Mr McVeety for the Secretary of State accepted, there has been no challenge to the expert report of Dr Campbell. His evidence, and I have no reason to doubt this, is that if the respondent were to return to Ethiopia, it is likely she would be detained and interrogated. He was of the opinion that it was likely that her background would come to light resulting in the invalidation of her passport and nationality; that she would be deemed to be an Eritrean national but would have no civil or legal right in Ethiopia and was at risk of being placed in a refugee camp.
10. There being no challenge to this evidence, I am satisfied that were the decision to be set aside then on the basis of this unchallenged evidence that the respondent has a well-founded fear of persecution in Ethiopia, if she is a national of that country, on the basis that she is also an Eritrean national. She would not be able to lie about her background or that she is married to a refugee and in the circumstances there is a real risk that she would face persecution on account of a Convention reason.
11. Accordingly, although the decision of Judge Farrelly did amount to an error of law, I am not satisfied that it would in all the circumstances of this case be a proper exercise of discretion to set the judgment aside given that on the basis of the evidence and the lack of challenge to the expert report which was accepted by the judge in the First-tier that the appeal would be allowed.

### **Summary of Conclusions**

1. The decision of the First-tier Tribunal did involve the making of an error of law but not one capable of affecting the outcome. Accordingly, the judgment is not set aside.
2. I uphold the decision of the First-tier Tribunal that the respondent has a well-founded fear of persecution in both Eritrea and Ethiopia.
3. I maintain the anonymity direction is made by the First-tier Tribunal

Signed

Date 18 August 2017

A handwritten signature in black ink, appearing to read 'James Rintoul'. The signature is fluid and cursive, with the first name 'James' written in a larger, more prominent script than the last name 'Rintoul'.

Upper Tribunal Judge Rintoul