Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04332/2017

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 15 May 2019	**On 13 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M H D D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Smith, Counsel instructed by Halliday Reeves Law Firm
For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, who is currently of undetermined nationality, was born on 1 January 1981. She arrived in the United Kingdom on 6 November 2015 and made an application for asylum the same day. The basis of her claim is that she is of Eritrean nationality but had been born and lived in Ethiopia until the age of 19 and that she was a Pentecostal Christian. On 20 January 2000, she and her father received a deportation order requiring them to leave Ethiopia and subsequently she left with her aunt and went to Sudan.

From there she travelled to the UK and made her asylum claim. Her claim was refused in a decision dated 25 April 2017.

2. The Appellant appealed against that decision and her appeal came before First-tier Tribunal Judge Parkes for hearing on 14 May 2018. In a Decision and Reasons promulgated on 31 May 2018, the judge dismissed the appeal, finding that the Appellant could obtain Ethiopian nationality and she could be expected to live there, and thus her fear of persecution in relation to Eritrea, i.e. having to undergo military service and difficulties she claimed in practising her Pentecostal Christianity would not arise.

3. Permission to appeal was sought, in time, on the basis: firstly, that the judge failed to have proper regard to the country guidance decision in ST (Ethnic Eritrean – nationality – return) Ethiopia CG [2011] UKUT 252 (IAC). It was asserted in this respect that the judge did not reject the Appellant's claim to be ethnically Eritrean, nor that she was made subject to a deportation order in 2000, but simply found she could obtain Ethiopian nationality and live there [29]. This follows his finding at [27] that the Appellant would be entitled to Ethiopian nationality by virtue of the Ethiopian Nationality Proclamation of 2003. However, that finding was inconsistent with the CG decision in ST at head note (4) which provides:-

> "*A person who is regarded by the Ethiopian authorities as an ethnic Eritrean and who left Ethiopia during or in the immediate aftermath of the border war between Ethiopia and Eritrea, is likely to face very significant practical difficulties in establishing nationality and the attendant right to return, stemming from the reluctance of the Ethiopian authorities to countenance the return of someone it regards as a 'foreigner'*"

and head note (6):-

> "*A person who left Ethiopia as described in (4) above is unlikely to be able to re-acquire Ethiopian nationality as a matter of right by means of the 2003 Nationality Proclamation and would be likely first to have to live in Ethiopia for a significant period of time (probably 4 years)".*

The Proclamation itself at [5.2] provides that a person applying for nationality would have had to have lived in Ethiopia for the four years preceding their application. This was also not considered by the First-tier Tribunal Judge.

4. The head note at (7) was also prayed in aid which provides:-

> "*The 2004 Directive, which provided a means whereby Eritreans in Ethiopia could obtain registered foreigner status and in some cases a route to reacquisition of citizenship, applied only to those who were resident in Ethiopia when Eritrea became independent and who had continued to reside up to the date of Directive*".

It is asserted that the judge had also failed to take this aspect of the country guidance decision into account.

5. Secondly, it was asserted that the judge had failed to make findings on material issues of fact, in particular:-

   (1) whether the Appellant had in fact been made subject to a deportation order;

   (2) whether the Appellant had previously had Ethiopian nationality and whether this was taken away

   and the failure to make such findings was contrary to the first head note of ST Ethiopia which provides, inter alia:-

   > "*Those perceived as ethnic Eritreans, who remained in Ethiopia during the war, and who were deprived of Ethiopian nationality, suffered arbitrary treatment, contrary to international law. Those who left Ethiopia at this time or who were then already outside Ethiopia were arbitrarily deprived of their Ethiopian nationality*".

6. Permission to appeal was granted by First-tier Tribunal Judge E B Grant in a decision dated 18 July 2018, on the basis that the judge has arguably erred in law by failing to make any finding on the Appellant's nationality from which the findings about risk on return will necessarily follow.

Hearing

7. At the hearing before the Upper Tribunal, Mr Mills accepted that the approach taken by the judge was contrary to the country guidance decision in ST (op cit) and the relevant legislation which suggests that the Appellant is unlikely to be able to obtain Ethiopian nationality. Thus he conceded that the judge had made a material error of law in this respect. He submitted however there were outstanding issues relating to the credibility of the Appellant's account that needed to be determined and thus the appropriate course of action would be a remittal back to the First-tier Tribunal.

8. Ms Smith on behalf of the Appellant accepted that further findings of fact needed to be made and that the country guidance decision in ST requires findings as to whether the Appellant left in the circumstances that she claimed.

Findings and Reasons

9. In light of Mr Mills' helpful concession I find that First-tier Tribunal Judge Parkes made material errors of law in his Decision and Reasons, in particular the failure to have proper regard to the country guidance decision in ST Ethiopia CG *op cit* for the reasons set out in the grounds of appeal cited in full above.

10. It is also the case that the judge failed to make any or any clear finding on material issues *viz* as to whether the Appellant had Ethiopian nationality previously and whether she had been made subject to a deportation order as she claimed on 20 January 2000. For this reason, it is necessary to remit the appeal back to the First tier Tribunal for findings of fact on these key issues to be made.

Decision

11. I remit the appeal for a hearing *de novo* before the First-tier Tribunal sitting in Nottingham (any judge other than Judge Parkes).

12. I make the following directions:-

    (1) The appeal should be listed for three hours.

    (2) An Amharic interpreter shall be required.

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 Rebecca Chapman Date 10 June 2019

Deputy Upper Tribunal Judge Chapman