



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-000246
First-tier Tribunal No:
DC/50127/2021 LD/00120/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 May 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

H M K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Butler, Counsel instructed by Thames Hill Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 28 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Davey promulgated on 17 November 2022 ("the Decision") dismissing

the Appellant's appeal against the Respondent's decision dated 6 May 2021, depriving him of British citizenship as a result of an asserted fraud.

2. In essence, the dispute is as to the Appellant's identity. It is common ground that he has claimed protection twice, once as a Tanzanian national and once as a Somali national. His asylum claim in the former identity was rejected but he was granted indefinite leave to remain in the Somali identity and later naturalised using that identity. The Respondent says that citizenship was obtained by fraud as the Appellant is in reality a Tanzanian national as he first claimed when he arrived in the UK. The Appellant says that the Somali identity is the true one and therefore there has been no fraud.
3. The Judge concluded that the Appellant's real identity was the Tanzanian one. He did so not simply on a review of the Respondent's decision (which is the correct approach following Begum v Secretary of State for the Home Department [2021] UKSC 7) but also because he was himself satisfied about this on the evidence.
4. The Judge went on to say that the Appellant had not raised any Article 8 issues and therefore that he did not need to determine that issue.
5. The Appellant appeals on three grounds as follows:
 - Ground 1: the Judge's findings in relation to fraud are perverse and/or fail to take account of relevant factors and/or are based on mistakes of fact.
 - Ground 2: the Judge was under the mistaken impression that Article 8 was not relied upon when it was.
 - Ground 3: the Judge failed to consider whether the Respondent's decision was vitiated by public law error.
6. Permission to appeal was refused by First-tier Tribunal Judge Parkes on 4 January 2023. However, following renewal to this Tribunal permission to appeal was granted by Upper Tribunal Judge Rintoul on 13 March 2023 in the following terms so far as relevant:

"It is arguable that the apparent acceptance of the appellant's ability to speak Kibajuni was not properly taken into account, given that it is a language spoken by a small number of people primarily in Somalia, not in Tanzania - see ASA (Bajuni: correct approach; Sprakab reports) Somalia CG [2022] UKUT 222.

Although there is less merit in the other grounds, I do not restrict the grant of permission."

7. The matter comes before me to decide whether the Decision does contain an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision

is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.

8. At the start of the hearing, Mr Clarke indicated that he conceded that there was an error disclosed by the Appellant's second ground. He indicated that, although he did not concede any error on the other grounds, he considered that the appeal should be remitted to the First-tier Tribunal as there had been no first instance consideration of the Appellant's human rights case.
9. As I indicated at the hearing, I accepted that concession. I also thought it likely that the Appellant would have been able to establish an error for the reasons set out by Judge Rintoul when granting permission but, as I did not hear submissions in that regard, I reach no conclusive view. Mr Clarke indicated in any event that he did not invite me to preserve any of the findings made by Judge Davey. Accordingly, all issues fall to be redetermined by the Judge who re-hears the appeal.
10. I therefore set aside the Decision in its entirety. Having done so, and given that my reason for finding an error of law in the Decision is based on the Judge having failed to deal with one of the issues raised and that all facts require to be redetermined, I consider it appropriate to remit the appeal for redetermination by the First-tier Tribunal.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge Davey promulgated on 17 November 2022 contains an error of law. I set aside the Decision and remit the appeal for re-hearing before a Judge other than Judge Davey.

L K Smith

Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 April 2023