IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000959
First-tier Tribunal No: PA/52867/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 May 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

BH
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family 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 or any member of his family. Failure to comply with this order could amount to a contempt of court.

Representation:
For the Appellant: Ms Jones, Counsel instructed by Shawstone Associates
For the Respondent: Mr Parvar, Senior Presenting Officer

Heard at Field House on 3 May 2024

DECISION MADE PURSUANT TO RULE 40(3) OF THE

TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Abebrese ("the judge") sent on 14 February 2024 dismissing his appeal against the decision dated 27 April 2023 refusing his protection and human rights claim.

2. Negative credibility findings made in a previous appeal in 2017 formed the judge's starting point. The judge decided not to depart from these previous findings and found that the appellant is an Ethiopian national rather than an Eritrean national as he claims. The judge also found that the appellant is not a genuine Pentecostal Christian; that the appellant would not face very significant obstacles on return to Ethiopia and further returning him to Ethiopia would not be a disproportionate breach of his family life with his British child because they can maintain the relationship through modern technology. The judge dismissed the appeal on all grounds.

3. At the outset of the error of law hearing, Mr Parvar for the respondent conceded that grounds 1 to 3 are made out.

4. I am in agreement that this is an appropriate concession in respect of these grounds.

5. The appellant submitted further evidence in respect of his claimed Eritrean nationality including his birth certificate, his father's death certificate and an expert report. He also provided a witness statement addressing the grounds of refusal. There is no acknowledgement or analysis of this evidence at any point in the decision apart from a bare assertion at [17] that the judge does not depart from the previous decision primarily because the appellant does not speak Tigrinya. The judge does not explain what he makes of the additional evidence.

6. Mr Parvar accepted that the judge failed to give any or any adequate reasons for rejecting this further evidence and that this failure vitiates the entire decision. Without consideration of this evidence the finding that the appellant is Ethiopian is unsustainable. Ground 2 is therefore made out.

7. Mr Parvar also accepted that the judge erred by making negative credibility findings in respect of the appellant's religious beliefs when it had been accepted in the decision letter that he is a Pentecostal Christian (for which reason the appellant did not call evidence in respect of this issue). I agree that this rendered the appeal procedurally unfair.

8. He also accepted that the judge also failed to recognise that in light of MST and others (national service- risk categories) CG [2016]

UKUT 00443 (IAC) the appellant would be at risk if he were found to be Eritrean.

9. I am in agreement with Mr Parvar that if Ground 2 were not made out, the remaining errors would not be material to the outcome of the appeal because the appellant would not be at risk on return to Ethiopia. However, given that the judge erred in respect of his reasoning on the appellant's nationality (Ground 2), these grounds are material to the outcome of the appeal.

10. I am satisfied that the appeal is vitiated by error, and I set aside the decision in its entirety. The findings are inadequately reasoned and unsafe and I do not preserve any findings.

11. I note separately that although no complaint was made in respect of the judge's treatment of Article 8 ECHR and no grounds were drafted in respect of this, the judge had no regard to s117(6)B in this respect.

Disposal

12. Neither party had a strong view on disposal. Ms Jones indicated that the Upper Tribunal could retain the appeal in accordance with Begum v SSHD (Remaking or remittal) Bangladesh [2023] UKUT 46. However, in accordance with that authority, I am satisfied that the decision is procedurally unfair because the judge went behind concessions made by the respondent. On that basis I am satisfied that the appeal should be remitted to the First-tier Tribunal so that the appellant does not lose the two-tier decision-making process. There is also a need for further factual findings to be made.

13. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing, but I have summarised the reasons above for the benefit of the parties.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error of law.

15. The decision of the First-tier Tribunal dismissing the appeal is set aside in its entirely with no findings preserved.

16. The decision is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge Abebrese, First-tier Tribunal Judge CM Phillips or First-tier Tribunal Judge NJ Bennett.

Signed Date: 3 May 2024

R J Owens
Upper Tribunal Judge Owens