



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

Appeal Number: DA/01682/2014

THE IMMIGRATION ACTS

Heard at Field House

On 6 November 2015

**Decision & Reasons
Promulgated**

On 24 November 2015

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR D B

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Solanki, Counsel, instructed by Wilson Solicitors LLP

For the Respondent: Mr S Staunton, Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

As a protection claim, I consider it is appropriate to make a direction.

DECISION AND REASONS

1. This is an appeal by the Appellant in relation to the decision of First-tier Tribunal Judge Davda, promulgated on 9 April 2015, dismissing the Appellant's appeal ("the Decision"). It comes before me in relation to

whether the Judge made an error of law in the Decision, permission to appeal having been granted by First-tier Tribunal Judge Baird on 7 May 2015.

2. The grounds on which the Appellant submits that an error of law was made are that the Judge failed to take into account the expert evidence of Dr Campbell and materially erred in considering the asylum and humanitarian protection claim. The Appellant is an Eritrean asylum seeker who seeks to have his deportation order revoked on the basis of a change in the country situation in Eritrea and the country guidance case of **MO (Illegal exit - risk on return) Eritrea [2011] UKUT 00190** in light of the fact that he was found in a previous appeal to be somebody who had served in the military between 1999 and 2000. In those circumstances it was necessary to consider whether the Appellant left Eritrea illegally, and if so whether he may be at risk on that account.
3. The Secretary of State has conceded that the Decision did indeed contain an error of law. Both parties are agreed that the appeal should be remitted to the First-tier Tribunal.
4. I am satisfied that the Decision does contain an error of law and I set it aside. I have considered whether it is appropriate to remit the appeal to the First-Tier Tribunal. In circumstances where the expert evidence and the findings of the previous Tribunal based on that evidence go to the Appellant's credibility it will be necessary for further evidence to be heard and fresh findings on credibility to be made. It is appropriate that the appeal be remitted.

Notice of Decision

I am satisfied that the First-Tier Tribunal's Decision contains an error of law. I set it aside and remit it to the First-Tier Tribunal for the re-making of the decision. No findings are preserved.

Signed



Upper Tribunal Judge Smith
2015

Date: 20 November