



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

Appeal Number: PA/10375/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons
Centre Promulgated
On 22nd June 2017 On 3rd July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**Y H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ramzan Sharif (Solicitor)
For the Respondent: Mr David Mills (Senior HOPO)

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of the First-tier Tribunal Judge Lodge sitting at Birmingham on 30th November 2016. The Appellant had appealed the Respondent's decision to refuse asylum dated

13th September 2016 and in respect of Article 8 of the European Human Rights Convention.

2. The Grounds of Appeal state that the Appellant, who is a national of Eritrea born on 21st February 1993, had a witness appearing on his behalf by the name of Tersit Gebru. Despite the fact that the judge recorded her oral evidence (at paragraphs 16 to 18), the record of her evidence does not reflect the contents of her witness statement (at paragraphs 37 to 40 of the Appellant's bundle) which makes clear that she knew the Appellant in Eritrea between 2000 and 2002.
3. On 20th March 2017, the Upper Tribunal granted permission on the basis of the failure to engage with and make findings on the evidence of the witness arguably rendered the judge's findings on the Appellant's nationality and his credibility flawed and unsustainable.
4. On 20th April 2017, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the Respondent did not oppose the Appellant's application for permission to appeal and invited the Tribunal to determine the appeal with fresh oral (continuance) hearing, because the judge did not appear to have made any findings with regards to the Appellant's witness, Tersit Gebru.
5. At the hearing before me on 22nd June 2017 Mr Sharif, appearing on behalf of the Appellant, relied upon the Grounds of Appeal, but also stated that in the light of the Rule 24 response, the appropriate course of action now was that this matter should be remitted back to the First-tier Tribunal, so that evidence of Tersit Gebru can be properly heard, properly recorded, and properly evaluated. In reply, Mr Mills, appearing as Senior Home Office Presenting Officer, accepted that this must be the appropriate course of action because not only does the Rule 24 response accept that there is an error of law, but if there is such an error, then the entire basis of the credibility findings in relation to the Appellant, comes cascading down. In these circumstances, the appeal has to be reheard completely with the evidence taken again.

Notice of Decision

6. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to a judge of the First-tier Tribunal, to be reheard again, other than Judge Lodge, at the earliest convenience, given that there was a failure to properly record the evidence of Tersit Gebru, because that evidence went directly to the Appellant's nationality, and the credibility of his claim.
7. An anonymity direction is made.

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 him or any member of their 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

Date

Deputy Upper Tribunal Judge Juss

2nd July 2017