



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03134/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 June 2018

Decision & Reasons Promulgated
On 14 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

D T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Robinson, Counsel
For the Respondent: Ms Z Ahmad

DECISION ON ERROR OF LAW

1. The appellant was born on 26 April 1998. He claims to be a citizen of Eritrea. The respondent does not accept that he is an Eritrean national and relies on a previous decision whereby the Tribunal found that the appellant was an Ethiopian national.
2. The appellant entered the UK illegally in November 2013. He made an asylum claim on 21 January 2014. The asylum claim was dismissed on 24 July 2014 and his appeal was subsequently dismissed on 15 October 2014, his appeal rights becoming exhausted on 28 October 2014.

3. The appellant was granted discretionary leave to remain from 24 July 2014 to 26 October 2015 as an unaccompanied minor. He made an in-time application for further leave to remain on 23 October 2015, which was granted to him from 25 February 2016 to 1 October 2016. A subsequent asylum application was refused on 6 March 2017. The appeal against this refusal was dismissed by First-tier Tribunal Judge M A Khan.
4. The appellant was granted permission to appeal Judge Khan's decision on the basis that the judge arguably erred in failing to consider material matters as identified in the grounds when considering the credibility of the claim and when assessing Article 8.
5. Whilst I find that the judge was right to use the previous decision made by FtTJ Blandy promulgated on 13 October 2014 as his starting point, I find that the judge made errors of law in his decision.
6. The previous judge was of the opinion that it should be open to the appellant to apply for Ethiopian nationality and there would not possibly be any risk for him doing so. The judge however failed to make findings regarding the appellant's approach to the Ethiopian Embassy as documented in his witness statements of 13 July 2017 and 17 November 2016 and the letter from Ceridwen Lewis of the British Red Cross dated 11 July 2017. The appellant's skeleton argument made clear that the evidence regarding his approach to the Ethiopian Embassy was evidence that would enable the judge to depart from the previous finding but the judge failed to engage with this point.
7. It was not clear that the judge appreciated the position in terms of the appellant's age and what the position was before the previous Tribunal. Judge Blandy was not satisfied that the appellant was the age he claimed to be. This was because there had been no formal age assessment by the local authority and there was no expert medical evidence before him. However, Judge Blandy's decision could not stand because the appellant was assessed by social services to be the age he claimed. There was no evidence that the judge appreciated this critical factual change in the light of what the judge said at paragraph 9(c) when he refused Counsel's request for an adjournment.
8. The judge was troubled in terms of the appellant's credibility by his failure to mention the original ID card in his statements of 17 November 2015 and 13 July 2017 given that it was sent to his previous representatives in January 2015. The judge failed to consider a witness statement from the appellant's current solicitor who explained that the failure to refer to it in the 13 July 2017 witness statement was an error and it was not clear why it was not referred to in the 17 November 2015 witness statement but that it was possible that the solicitor drafting that statement was not aware of it. The appellant changed representatives before making his application for further leave and it was unclear when the original ID card was received by his current representatives from his previous representatives. In these circumstances the judge erred in making negative credibility findings on this issue.

9. I find that the judge acted unfairly in failing to adjourn the appeal to allow the appellant to verify his father's original identity card. In any event the judge failed to make a finding on the identity card other than finding that the appellant was not credible.
10. It appeared from paragraphs 48 and 49 that the judge was considering return to Eritrea in line with the removal directions and appellant's claim to be an Eritrean national. However, the judge failed to consider the objective evidence on Eritrea and the respondent's current policy entitled "Eritrea: National Service and illegal exist" dated October 2016 which makes clear that if an individual is likely to be required to undertake national service, he is likely to face conditions that amount to a breach of articles 3 and 4 ECHR.

Notice of Decision

11. For these reasons I find that the judge's decision cannot stand. It is set aside in order to be remade.
12. The appellant's appeal is remitted to Hatton Cross for rehearing by a judge other than First-tier Tribunal Judge M A Khan.
13. The appellant will require an interpreter in the Tigrinya language.

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: 13 June 2018

Deputy Upper Tribunal Judge Eshun