



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09200/2019

THE IMMIGRATION ACTS

Heard at: Bradford
On: 3rd February 2020

Decision Promulgated
On: 4th March 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

YS
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Brown, Counsel instructed by CB Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ethiopia born in 1988. He appeals with permission against the decision of the First-tier Tribunal (Judge Housego) to dismiss his appeal on all grounds.
2. The background to the appeal before the First-tier Tribunal was that the Appellant is an illegal entrant who has lived in the United Kingdom since at least 2006. An asylum claim was rejected and he became 'appeal rights exhausted' in 2007. He did not however leave the country and in 2015 he was

convicted on two counts of Grievous Bodily Harm and sentenced to concurrent sentences of 7 ½ years' imprisonment.

3. It will be apparent from that brief chronology that the Appellant had something of an uphill struggle in respect of the 'human rights' limb of his appeal. It was not however a hopeless cause, with the Appellant submitting *inter alia* that he was a victim of torture who had psychological problems as a result. The Appellant also relied upon protection grounds, arguing that he was exempt from the automatic deportation provisions in s32 of the Borders Act 2007 because he was in fact a refugee. The basis of that claim was involvement in Oromo separatism.
4. When the appeal came before the First-tier Tribunal the Appellant was in detention. The hearing was held at Harmondsworth. When the Appellant was brought before the judge he was unrepresented. He indicated that there were some documents in his cell which he wanted to present. These included documents relating to his relationships with a partner and child in the United Kingdom, a 'Rule 35' report which he averred would confirm his history of torture, and some documents purporting to originate from the police in Addis Ababa in the course of an investigation into the Appellant's "unlawfully inciting people for an uprising". The judge declined to permit the Appellant to return to his cell to get the documents and the hearing proceeded without them. The appeal was then dismissed on all grounds.
5. The Appellant, still at that stage unrepresented, drafted the grounds himself. First-tier Tribunal EM Simpson considered it arguable that they disclosed an error of law in the approach of the First-tier Tribunal:

"Having regard to the primacy of the principle of natural justice underlying our jurisdiction of law, there appeared material grounds giving rise to arguable errors of law having considered both the Decision and permission grounds (and for clarification the typed record of proceedings) that when determining the appeal the judge appeared to have inadequate regard to the appellant having been unrepresented at the hearing, including in the light of R.35 evidence that likely he was a vulnerable adult witness, of which R.35 Report there was a brief mention and discussion in the decision (para 41, 62) but absence of regard to its import viz. the Presidential Guidance 'Child Vulnerable Adult and Sensitive Witness' with no sight of said report in the appeal file, only the HO's response of the 07/06/2019, giving rise to the question whether it had effectively been the HO response which the judge considered..."

Judge Simpson also regarded it as arguable that the decision of the First-tier Tribunal had failed to give adequate reasons.

6. Before me Mr Diwnycz accepted that at least in respect of the procedural unfairness point upon which Judge Simpson had granted permission, he was not in a position to advance a contrary case. The Appellant had asserted that he was a victim of torture, was unrepresented and wanted the matter put back in the list to enable him to fetch papers from his cell. Those papers were subsequently submitted with the grounds of appeal, *prima facie* indicating that they were indeed available to him. The Secretary of State, whilst maintaining that the case was without merit and should ultimately be dismissed, accepted that fairness, particularly in respect of an unrepresented witness, required the First-tier Tribunal to conduct a careful assessment of whether he was in fact a 'vulnerable' adult witness. Such a finding should have been the starting point of the tribunal, since it would frame the way in which the hearing would proceed, and the evidence would be assessed. No such finding is discernible in the decision. For that reason it is accepted that the decision must be set aside to be remade by another judge of the First-tier Tribunal, remittal being the appropriate disposal in a case of procedural unfairness.

Anonymity Order

7. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

8. The determination of the First-tier Tribunal is set aside. The appeal is to be reheard in the First-tier Tribunal.
9. There is an order for anonymity.

Upper Tribunal Judge Bruce
20th February 2020