



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00066/2020**

THE IMMIGRATION ACTS

**Heard at Manchester CJC on 11
November 2020
At a remote hearing via Skype**

**Decision & Reasons
Promulgated
On 17 November 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**M
ANNONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Saunders, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. I have made an anonymity direction because this decision refers to the appellant's international protection claim.
2. This is an appeal by the appellant (who was born in 1994), who claims to be a citizen of Eritrea, against a decision of First-tier Tribunal ('FTT') Judge Mark Davies, sent on 18 March 2020, dismissing his appeal on asylum grounds.
3. In a decision dated 6 July 2020 Upper Tribunal ('UT') Judge Finch granted permission to appeal observing all the grounds of appeal to be arguable. Judge Finch was particularly concerned that the FTT failed to apply the appropriate standard of proof to the question of the appellant's nationality and failed to take into account his age when his Eritrean parents died and the fact that he was raised by an Ethiopian foster mother when making findings on nationality.
4. The matter now comes before me to determine whether the FTT decision contains an error of law, and if so whether it should be set aside.
5. At the beginning of the hearing Mr McVeety conceded that the FTT's decision contains material errors of law such that it should be set aside. Mr McVeety was entirely correct to concede the appeal for the reasons I summarise below.
6. Both representatives agreed that the error of law is such that the decision needs to be remade completely. This will require fresh findings of fact. I had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I decided that the matter should be remitted to the FTT.
7. The appellant's evidence in support of his claim to be a citizen of Eritrea and not Ethiopia is clearly set out in his witness statement dated 10 February 2020. This includes the following: he was born in Eritrea to Eritrean parents; his mother died when he was a baby; his father along with the appellant moved to Ethiopia shortly after this, in order to work as a vet and to live with his Ethiopian girlfriend; his father died when the appellant was about 4 years old and he continued to live with his girlfriend (who he describes as a foster mother); the appellant never had lawful status in Ethiopia and in 2015 was placed in a refugee camp before moving back to Eritrea; he had further difficulties in Eritrea before leaving on foot to Sudan in 2016; in Sudan he met and married his wife, a citizen of Ethiopia; she returned to Ethiopia in 2017 and the appellant fled Sudan and claimed asylum in the UK in 2018.

8. Mr McVeety was correct to concede that the FTT's adverse findings of fact and conclusion that the appellant fabricated his account failed to take into account important aspects of the appellant's evidence as summarised above. I am also satisfied that McVeety was entirely correct to concede that the FTT erred in law in:
- (i) drawing adverse inferences from the appellant's inability to speak the language of Eritrea without addressing his claim that he left Eritrea as a young child where he was brought up by an Ethiopian foster mother and only spent a brief period of under a year in Eritrea between 2015 and 2016;
 - (ii) basing the conclusion that the appellant is a national of Ethiopia on the lower standard of proof and not the balance of probabilities - see [63] and [67];
 - (iii) in any event failing to engage with the evidence as to the legal framework for the acquisition of Ethiopian citizenship particularly in the light of the appellant's claim that he resided in Ethiopia unlawfully and never lived in Ethiopia with his wife.

Decision

9. The FTT decision contains errors of law. Its decision cannot stand and is set aside. The matter is remitted to the FTT, where it will be remade de novo by a judge other than Judge Mark Davies.

Signed: Ms M. Plimmer
Judge of the Upper Tribunal

Date: 11 November 2020