



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002965
First-tier Tribunal No:
PA/55022/2021
IA/02065/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 May 2023

Before

UPPER TRIBUNAL JUDGE OWENS

Between

ZR
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hatton sent on 26 May 2022 dismissing his appeal against the decision dated 19 August 2021 refusing his protection and human rights claim.
2. The judge found the appellant to be entirely lacking in credibility and dismissed the appeal on all grounds.
3. By a rule 24 notice dated 25 July 2022, the respondent conceded the appeal and invited the Upper Tribunal to set aside the decision and to determine the appeal with a fresh hearing. The respondent agrees that the decision maker had accepted that the appellant was born an illegitimate child because of the detailed and consistent account he had given (see paragraphs 27 to 33 of the refusal decision) and that the judge's decision does not indicate that the appellant was put on notice that this matter would be revisited at the hearing, nor that the appellant would be expected to provide documentary evidence relating to an undisputed matter.
4. Paragraph 24 of the rule 24 notice expressly conceded that the hearing before the judge on 23 May 2022 appears to have been procedurally unfair.

5. On 19 December 2022, by way of directions, Upper Tribunal Judge S Smith expressed his preliminary view that in light of the Secretary of State's concession the appropriate course would be to set aside the decision with no findings preserved and remit the decision to the First-tier Tribunal to be heard afresh by a different judge.
6. Neither party objected to the decision being set aside and neither party requested an oral hearing. On this basis I am satisfied that this issue can be fairly determined on the papers without an oral hearing.
7. I am satisfied that the respondent's concession is appropriate. It was unfair of the judge to make negative credibility findings on the basis that the appellant had failed to produce evidence that he was unaware he needed to produce. The decision therefore involved the making of a material error of law in that there was procedural unfairness, and the decision is therefore set aside.

Disposal

8. On 23 February 2023 the respondent replied to directions. The respondent submits that those parts of the decision relating to the judge's findings in respect of the appellant's political activity should be preserved as they relate to a concrete and different issue to that of risk from family members due to his illegitimacy.
9. On 24 February 2023 the appellant's representative also responded to directions opposing the respondent's course of action in respect of the preserved findings and submitting that the procedural unfairness had infected the whole decision.
10. I have had regard to Begum (remaking or remittal) Bangladesh [2023] UKUT 00046. When deciding whether to depart from the general principle that a case will be retained in the Upper Tribunal, I must consider the nature of the unfairness and the extent of the impact on the findings overall. In my view, the judge's negative view of the appellant's credibility as a result of him failing to adduce evidence of an issue which was not in dispute infected the judge's view of the appellant's credibility as a whole as is apparent from the outset of the decision at [27] and [30] and, as First tier Tribunal Judge Carolyn Scott notes in her grant of permission, at [110] to [114] where explicit reference is made the appellant's overall credibility being undermined by his failure to adduce his birth certificate. It is manifest that the judge placed considerable weight on this failure.
11. I am satisfied that in these circumstances a fresh hearing before a different judge is required to provide the appellant with a fair hearing.
12. In these circumstances, I find that it is in the interests of justice to remit the appeal to the First-tier Tribunal with no findings preserved.

Notice of Decision

13. The decision of the First-tier Tribunal involved the making of an error of law.
14. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.
15. The decision is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge Hatton.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 May 2023