



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006530
First-tier Tribunal No:
PA/51928/2020; IA/01543/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

H F B
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION MADE WITHOUT A HEARING PURSUANT TO
RULE 34 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES
2008

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. Although an anonymity direction was not made by the First-tier Tribunal Judge, this is an appeal on protection grounds and I therefore make an anonymity direction of my own volition. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Cohen dated 11 October 2022 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 1 October 2020 refusing his protection and human rights claims.
2. The Appellant claims to be from Eritrea. He fears return to that country as a Pentecostal Christian. The Respondent did not accept the Appellant’s nationality, relying on various inconsistencies in the Appellant’s evidence and his inability to answer questions about Eritrea.
3. The Appellant’s first appeal on protection and human rights grounds was dismissed by First-tier Tribunal Judge Young on 14 April 2018. The Appellant made further submissions which were rejected by the Respondent but it was accepted that he should have a further right of appeal. The Appellant provided further evidence including a birth certificate said to demonstrate that he was a national of Eritrea.
4. As recorded at [29] of the Decision, the Respondent in her decision letter under appeal did not accept that the birth certificate was a genuine document. One of the reasons was that the birth certificate was only a copy and had not been verified by an expert (although as noted at [16] of the Decision the Respondent also said that it was an original). The Appellant’s position is recorded at [33] of the Decision as being that the birth certificate established his nationality.
5. By the time of the First-tier Tribunal hearing, the Appellant had obtained an expert report from Mr David Seddon which concluded that there was “no good reason ...not to consider the documents as a genuine and authentic birth certificate”. It is of note that at [5.1] of the report, Mr Seddon records that he received the original birth certificate.
6. At [38] to [40] of the Decision, the Judge made certain observations about the birth certificate including that he had only a copy and translation of the birth certificate. He records that he had the expert report but he found this to be “poor and [of] very little evidential value”.
7. At [49] of the Decision, when reaching his findings on credibility, the Judge said this about the birth certificate and expert report:

“The appellant has produced a copy birth certificate. Surprisingly, the appellant’s uncle, who was stated to have produced the same does not indicate how he did so or that he was submitting the same in his own witness statement. The document is a mere photocopy. The expert himself, with whose reports I have issues which I have been [sic] identified above, indicates the prevalence of forgeries of such documents purporting to be from Eritrea. As the document is purely a copy and there is not a specific document verification report in respect of the same despite the respondent having questioned its veracity. I apply Tanveer Ahmed and attach little weight thereto.”

[my emphasis]

8. The Judge dismissed the appeal, finding that the Appellant was not a national of Eritrea.
9. The Appellant appeals on three grounds, only one of which I need mention. The first ground is that the Judge has made a material mistake of fact in finding that the birth certificate was only a copy. As the Appellant there notes, the expert confirmed that he had the original birth certificate. The Appellant also says that he sent the original birth certificate to the Respondent (although that might be a matter of dispute since the Respondent in the decision letter says that the document is a copy although in the alternative that she had the original).
10. Permission to appeal was granted by First-tier Tribunal Judge Sills on 11 October 2021 in the following terms:

“..2. It is arguable that the Judge has made a material mistake of fact. The grounds assert that the birth certificate relied upon by the Appellant is the original, and that the original was provided to both the Respondent and the country expert for inspection. The decision makes repeated reference to the birth certificate being a ‘mere copy’ and ‘merely a photocopy’. If the Judge is wrong about that, then that is arguably a material mistake of fact.”
11. On 19 December 2022, the Respondent filed a Rule 24 Reply indicating that she “does not oppose the appellant’s application for permission to appeal” and inviting the Tribunal to remit the matter to the First-tier Tribunal for re-determination afresh. Since then, the Appellant’s solicitors have been in contact with the Tribunal on a number of occasions asking for the appeal either to be remitted or listed for consideration of the error of law issue.
12. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, permits the Tribunal to make a decision without a hearing. Whilst rule 34(2) requires the Tribunal to have regard to “any view expressed by a party” when deciding whether to hold a hearing and the form of such hearing, there is no requirement for the Tribunal to seek such views before determining whether a hearing is necessary. In any event, in this case, it is implicit in the Respondent’s Rule 24 response and the communications between the Appellant’s solicitors and the Tribunal that both parties are agreed as to the outcome of the Appellant’s appeal to this Tribunal, namely that the Tribunal should find an error on the basis conceded and should remit the appeal to the First-tier Tribunal. Neither party has indicated that a hearing is necessary to determine the outcome and course of action which should be taken.
13. I am therefore satisfied that this is a case in which it is appropriate to determine the error of law issue without a hearing. Whilst the Judge was entitled to take into account when determining the credibility of the Appellant’s claims many of the factors which he has taken into account, he made a material mistake of fact when considering the birth certificate. The expert made clear reference to having the original of that birth certificate when assessing whether it was genuine. The expert report

and the birth certificate itself therefore needed to be considered in that context. Since the issue of the Appellant's nationality is central to his protection claim, and the birth certificate is or may be a crucial document when considering that issue, the error made is material.

14. For those reasons, I accept the Respondent's concession. Since the appeal turns on the Appellant's credibility and the error which is conceded concerns the credibility of his claim, I am satisfied that it is appropriate to set aside the Decision. I do not consider it appropriate to preserve any findings. The credibility of the Appellant's claims needs to be considered entirely afresh. All issues need to be redetermined. I am therefore satisfied that it is appropriate to remit the appeal to the First-tier Tribunal as both parties invite the Tribunal to do.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge Cohen dated 11 October 2022 contains an error of law. I set aside the Decision and remit the appeal for re-hearing before a Judge other than Judge Cohen.

L K Smith

Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 June 2023