



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Extempore

Case No: UI-2024-001817

First-tier Tribunal No:
PA/54915/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 16 January 2025**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MB
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms K Dingwall, Latta & Co Solicitors

For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard at Edinburgh on 19 December 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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 with permission against the decision of First-tier Tribunal Judge Agnew, promulgated on 28 March 2024, dismissing the appellant's appeal against the decision of the Secretary of State and then on 14 July 2023 to refuse his protection claim that had been made on 25 October 2021.
2. In brief, the appellant is a citizen of Sierra Leone, who says that he is at risk on return to Sierra Leone on account of his membership of a particular social group, that is someone opposed to initiation into the Poro Society, a secret society extant in Sierra Leone. But the Secretary of State did not accept his case.
3. As a preliminary matter the judge raised the fact that the woman known as AK who brought children to the United Kingdom including the appellant, although not their parent, had been refused asylum and her appeal had been refused. She provided the appeal numbers, PA/54950/2023 and one PA/51388/2021. The judge noted these at paragraph [27] of her decision and then at [28], that she had said that she would not take them into account in her decision. The judge went on to dismiss the appeal.
4. The appellant sought permission to appeal on the grounds that the judge had made a procedural error. She had raised the decision dismissing AK's appeal (which had not been seen by any of the parties) and stating that she did not think it was relevant, a matter she confirmed at paragraph 19, she then relied on it at paragraphs 28 to 32 of her decision, including reference to evidence given by AK which is referred to at paragraph [49], contrary to what she had said. It is submitted that this was a procedural error, amounting to an error of law and the decision should be set aside.
5. On 25th April 2024 First-tier Tribunal Judge Pickering granted permission on only the first ground, that being procedural irregularity.
6. When the matter came before me, Ms Dingwall and Ms Blackburn were able to have a discussion as a result of not having immediate access to all the relevant material. Ms Blackburn, and I am grateful for her doing so, was able to access the notes of the Presenting Officer who had appeared before Judge Agnew but confirmed that these did not shed any light on what had been said. She did however concede that as the judge had said that she was not going to pay regard to AK's appeal but had nonetheless done so, this was procedurally unfair.
7. I am satisfied in this case that the judge did state to the parties that she was not going to take account or attach weight to the decision in AK's appeal but had then done so. That is a clear procedural error. Had she said that she would take it into account then both parties would have had an opportunity to make submissions about it. This is of particular prejudice to the appellant and in the circumstances of the factual matrix in this appeal, it cannot be said that this error could have made no difference. _
8. Accordingly, I am satisfied the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. Given there has been

serious procedural error whereby the appellant was deprived of a fair hearing, I was satisfied that the only course of action pertinent to this case is to remit the decision to the First-tier Tribunal to be heard again by a judge other than Judge Agnew. None of the findings of fact are preserved.

Notice of decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I direct that the appeal be remitted to the First-tier Tribunal to be determined afresh by a judge other than Judge Agnew.

Signed

Date: 13 January 2025

Jeremy K H Rintoul
Judge of the Upper Tribunal