



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/00955/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 17 September 2013**

**Determination  
promulgated  
On 18 September 2013**  
.....

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ALAZAR BERHE**

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co.,  
Solicitors.

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The SSHD appeals against a determination by a panel comprising First-tier Tribunal Judge Morrow and Ms Street JP, allowing Mr Berhe's appeal against refusal of asylum.
2. The Presenting Officer's submissions followed the lines of the grounds of appeal, which rehearse again in detail the SSHD's position that Mr Berhe is not credible, and argue that the panel did not adequately deal with those points. The grounds secondly attack the panel's conclusions related to Mr Berhe's possibly illegal exit from Eritrea.

3. Mr Winter pointed out that the SSHD's case, and the history from which the SSHD sought to draw negative inferences, are referred to clearly throughout the determination, and explicitly taken into account. At paragraphs 15 and 19 the panel accepted that Mr Berhe carried out his deceptions through desperation, and found his evidence credible and straightforward. His reliability was enhanced by evidence which the panel accepted from his partner and from a Pastor of the Pentecostal Church, of which Mr Berhe is a member. The positive credibility findings were properly open to the panel. Its reasons, if brief, were sufficient. The panel carried out its proper function. It was common ground that on a finding that he is a Pentecostalist Mr Berhe was entitled to succeed. If the credibility findings were sound, the SSHD's second ground was beside the point.
4. I advised that the SSHD's appeal to the UT would be dismissed.
5. The SSHD's grounds come close to an argument that no rational panel could have believed Mr Berhe. The SSHD's case in the FtT was sensibly made, but there were two sides, and it was the panel's function to decide between them. As Mr Winter argued, the panel reached conclusions properly open to it, for reasons adequately explained. The grounds are no more than an insistence upon the SSHD's side of the case on credibility. They disclose no legal basis on which the UT would be entitled to go behind the conclusions reached by the tribunal of fact. The conclusions related to possible illegal exit and perception of Mr Berhe as a draft evader might be open to debate, but that need not be taken any further.
6. The determination of the First-tier Tribunal shall stand.
7. No order for anonymity has been requested or made.



17 September 2013  
Judge of the Upper Tribunal