



IAC-FH-NL-V1

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

Appeal Number: DA/00351/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 12 November 2014**

**On 26 November 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MR KIBRON HAYLE**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Bandegani, Counsel

For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

1. The appellant appeals with leave against the decision of First-tier Tribunal Judge M R Oliver dismissing his appeal against the respondent's decision to refuse to revoke a deportation order against him and to refuse him asylum in the United Kingdom. The appellant claimed that his deportation would breach his rights under Article 8 of the ECHR.
2. Both parties at the hearing accepted that the judge made errors of law in his decision.

3. The respondent in the reasons for refusal letter accepted that the appellant is Eritrean. As a consequence the judge also accepted that the appellant is Eritrean. In spite of this the judge accepted an undertaking from the HOPO who undertook on behalf of the respondent that the appellant would not be returned to Eritrea but to Ethiopia. Consequently the judge found that the appellant's claim to asylum failed and with it his claim to protection under Articles 2 and 3. I accept the argument in the grounds that this conclusive finding provided no dispositive answer to the protection claim made by the appellant where the judge adopted the Secretary of State's acceptance that the appellant is Eritrean. It is also argued in the grounds that the judge improperly recorded the undertaking which was conditional upon the appellant making a request to be returned to Ethiopia. The appellant has not made such a request. On this evidence I find that the judge erred in law in relying on the undertaking made by the HOPO and this led to an error of law in his decision.
4. I find that the judge's findings in respect of the appellant's Article 8 appeal are wholly inadequate. The appellant has a wife and three children who are British nationals. The judge failed to consider this evidence in his assessment of proportionality.
5. The errors are such that the judge's decision cannot stand.
6. The appellant's appeal is to be remitted to Hatton Cross for re-hearing on all issues.

Signed

Date: **24 November 2014**

Upper Tribunal Judge Eshun

## **DIRECTIONS**

**The appellant is to be listed for CMR hearing at Field House in 4 weeks to ascertain whether the respondent maintains the same destination in respect of the removal directions i.e. Eritrea.**