



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

Appeal Number: AA/02399/2015

THE IMMIGRATION ACTS

**Heard at Stoke
On May 5, 2016**

**Decision &
Promulgated
On May 17, 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR PETER KAHURA WAITHAKA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Ms Hussain (Legal Representative)

Respondent

Mr Mills (Home Office Presenting Officer)

DECISION AND REASONS

1. I do not make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

2. The appellant is a national of Kenya. On October 8, 2014 the appellant claimed asylum and the respondent refused his application in a decision dated January 30, 2015.
3. The appellant appealed that decision on February 11, 2015 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and the appeal came before Judge of the First-tier Tribunal Cooper (hereinafter referred to as "the Judge" on July 16, 2015. In a decision promulgated on August 3, 2015 the Judge found she had no jurisdiction to hear the appeal because there was a certification under section 94(3) of the 2002 Act.
4. The appellant appealed the Judge's decision on August 17, 2015 and permission to appeal was refused by Judge of the First-tier Tribunal Simpson on September 18, 2015. Permission to appeal was renewed and permission was granted by Upper Tribunal Judge Pitt on October 20, 2015 who found there was an arguable error in law on the basis the Judge had not dealt with the correct decision and appeal there being an earlier decision dated January 15, 2015 which was certified whereas the decision dated January 30, 2015 was not certified.
5. The matter came before me on the above date. I had before me a Rule 24 response from the respondent dated November 10, 2015 in which the respondent accepted there had been an error in law.

DISCUSSION AND FINDINGS

6. In granting permission to appeal Upper Tribunal Judge Pitt identified an arguable error of law. The respondent conceded that error in a letter dated November 10, 2015.
7. There has been no hearing of the evidence in this case.
8. I raised with both representatives where this appeal should be heard and both parties agreed with me that in light of Part 3, Section 7.1 to 7.3 of the Practice Statement the matter should be remitted to the First-tier Tribunal.
9. I direct that any additional evidence should be served on both the Tribunal and other party in accordance with the current Procedural Rules.

DECISION

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision.
11. The appeal is remitted back to the First-tier Tribunal for these issues to be addressed hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.

12. I direct that the matter be listed before any Judge of the First-tier Tribunal other than Judge of the First-tier Tribunal Cooper.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis