Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08081/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 April 2018	**On 17 April 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

K K

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Burrett of counsel, instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr. T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant was born on [ ] 2001 and it is his case that he is a national of Eritrea. He fears persecution there on the basis of being a Pentecostal Christian and not wishing to be forced to

undertake indefinite military service. He arrived in the United Kingdom on 5 January 2017 and made contact with the Home Office to make a claim for asylum on 17 January 2017.

2. His application was refused on 8 August 2017 and he appealed against this decision. However, First-tier Tribunal Judge Shore dismissed his appeal in a decision, promulgated on 11 December 2017. The Appellant appealed against this decision and First-tier Tribunal Judge Ransley refused him permission to appeal on 9 January 2018.

3. Subsequently, Upper Tribunal Judge Rintoul found that it was arguable that First-tier Tribunal Judge Shore erred in law in concluding that Ms Tadese was not a vulnerable witness and that all other grounds were arguable. The Respondent filed a Rule 24 response on 19 March 2018.

THE ERROR OF LAW HEARING

4. The Appellant had been accompanied to the hearing by his social worker. At the beginning of the hearing I provided the Home Office Presenting Officer with copies of the documents which had been handed up at the last hearing and which were not in his file. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below. I asked counsel to restrict himself to the issues which were included in the grounds of appeal and on which permission to appeal had been granted.

ERROR OF LAW DECISION

5. In his decision, the First-tier Tribunal Judge referred to a number of documents which had been highlighted in the skeleton argument submitted on behalf of the Appellant. These included the Immigration Law Practitioners' Association's *Working with children and young people subject to immigration control: Guidelines for best practice,* and the Joint Presidential Guidance Note No. 2 of 2010: *Child, vulnerable adult and sensitive appellant guidance.*

6. In the ILPA Guidelines paragraph 8.1 states that:

> "The principle of best interests means that there is a need for careful case management when dealing with hearings and court appearances by children and young people who are subject to immigration control in the UK because of their potential vulnerability".

7. It also states in paragraph 8.22 that:

> "The evidence provided by children and young people during hearings and court appearances should always be approached with caution. Depending on his or her age, a child or young person is less likely than an adult to recall dates, the order in which events occurred, or why those events occurred. Children and young people may also struggle to understand the significance of certain events, and so fail to mention them when first interviewed. If such details emerge under further questioning at the hearing, the credibility of the child's account should not be undermined".

8. Ms Tadese was a child, at the time of the hearing on 19 September 2017, as she had been born on 16 December 1999. She is also an Eritrean national, who is subject to immigration control, as she had been granted asylum in the United Kingdom.

9. Section 8 of the Guidelines contains detailed guidance as to how the participation of children in asylum and immigration appeals should be facilitated. First-tier Tribunal Judge Shore did not follow this guidance and did not remind himself that this witness was herself a child. In contrast, in paragraph 100 of his decision he stated that he was not a vulnerable witness. The Appellant's skeleton argument drew the Judge's attention to the relevant guidance but the Judge did not follow it. It was not sufficient to note her date of birth and then fail to follow the guidance. It was also not necessary for the Appellant to request that she be treated as a vulnerable witness as the policy was very clear.

10. The Joint Presidential Guidance notes in paragraph 1 that it applies to both appellants and witnesses. In paragraph 10.2 it advises judges that during a hearing he or she should:

    "i. Speak clearly and directly to the appellant/witness. Demonstrate active listening.

    ii. Use plain English and avoid legal and other jargon; be sensitive to specific communication needs for reasons of language or disability,

    iii. Ensure questions asked are open ended wherever possible; broken down to avoid having more than one idea or point in each question and avoid suggesting a particular answer.

    iv. Curtail improper or aggressive cross examination; control the manner of questioning to avoid harassment, intimidation or humiliation. Ensure that questions are asked in an appropriate manner using a tone and vocabulary appropriate to the appellant's age, maturity, level of understanding and personal circumstances and attributes. Pay special attention to avoid re-traumatisation of a victim of crime, torture, sexual violence

v. Be sensitive to the possibility that the witness/appellant has understood the question, and, if there is a risk of confusion, check this

vi. Ensure that adequate breaks are given during the hearing; check at intervals throughout the hearing that the appellant is comfortable and understands the proceedings; don't wait to be asked.

vii. If there is no or inadequate representation it is important that you obtain clarification of all matters of which you are unclear.

viii. If an individual is, during the course of the hearing, identified as a vulnerable adult or sensitive witness, an adjournment may be required to enable expert evidence to be called as to the effect of this on the individual s ability to give cogent evidence of the events relied upon. Allow adequate time for the representative, if there someone, to consider and take instructions".

11. This clearly did not happen in relation to Ms Tadese. This in itself amounted to an error of law in so far as the First-tier Tribunal Judge did not comply with the published policy of the Tribunal, which indicated how child witnesses should be dealt with in order to ensure that a fair hearing was conducted. It also had a significant effect on the Appellant's appeal as the Judge held it against the Appellant that he had found Ms Tadese not to be a credible witness. This was despite the fact that he was a child and, therefore, he was not legally competent to conduct his own appeal. In such a situation, it would have been his legal representatives, and not him, who would have taken the decision to call Ms Tadese, as a witness

12. It is also my view that the First-tier Tribunal Judge failed to give sufficient reasons for finding in paragraph 100 that Ms Tadese was not a credible witness. He stated that her witness statement was not adequate but did not identify why it was an inadequate document, especially when it represented the evidence provided by a child. He did not explain why it was unlikely that she should have heard her father speaking in Tigrinya with the Appellant's father or why it was implausible that she could not remember when the Appellant left Sudan. In addition, the fact that she had only been asked to provide a witness statement two weeks before the appeal hearing did not necessarily give rise to any adverse findings about her credibility. No evidence was provided about the workload of the Appellant's legal representatives and no evidence had been sought about when the Appellant and Ms Tadese had met up again in London.

13. The manner in which Ms Tadese's evidence was treated also had a significant effect on the Appellant's appeal, as it was her evidence that he had lived in Assab in Eritrea, where Amharic was widely spoken, and that she also spoke Amharic as a first language having been born in Assab and then lived in Sudan.

14. In paragraph 61, it is recorded that the Appellant heard a pastor, called Henock, preaching. In paragraph 82 it was recorded that the Ms Tadese had said that the main pastor was called Tedros. These two statements are not mutually exclusive.

15. For all of these reasons, I find there was a lack of reasoning in relation to witness evidence which could potentially support the Appellant's case in relation to his nationality, a factor which was central to the Appellant's appeal.

16. In paragraph 106 of his decision, the First-tier Tribunal Judge stated that he preferred the Respondent's interpretation of the location evidence to the Appellant's interpretation. This partially arose from the fact that he had not found Ms Tadese to be a credible witness and, for the reasons given above, I have found that his reasoning on this point was unsustainable.

17. The Respondent also relied on paragraphs 15.1.3 – 15.1.4 of the UK Fact Finding Mission *Eritrea: illegal exit and national service*, 7 – 20 February 2016. The source of these findings were young people and it was not clear what expertise they had to form these views and how many young people were actually spoken to. Given the source of this information it is difficult to know why it was given "preference" to that provided by the University of Cambridge Language Centre, which stated that:

> "Amharic belongs to the Southern Semitic branch of the Afro-Asiatic family of languages. It is the official language and lingua franca in Ethiopia where there are approximately 13 million speakers. There are approximately another 13 million people who speak Amharic as a second language in Ethiopia and Sudan".

18. The use of the word "preference" also suggests that the Judge was applying a balance of probabilities, as opposed to the requisite lower standard of proof coupled with a holistic approach. The latter required him to give some weight to the evidence provided by the Appellant and Ms Tadese in the context of the except from the EASO report *Country Focus, Eritrea*, May 2015 which states that:

> "Amharic was the only official language between 1959 and 1991 while Eritrea was part of Ethiopia. It is still used in addition to Tigrinya as a first or second language by Eritreans who grew up in Ethiopia (the 'Amiche') as well as in places where it was dominant during the Ethiopian rule, such as Assab. This is because it was the main port during the Ethiopian period and many Amharic speakers migrated to the city".

19. As a consequence, I find that First-tier Tribunal Judge Shore did err in law in his decision.

DECISION

(1) The Appellant's appeal is allowed and First-tier Tribunal Judge Shore's decision is set aside.

(2) The appeal is remitted to a First-tier Tribunal Judge, other than First-tier Tribunal Judge Shore or Dr. Ransley, for a *de novo* hearing.

Nadine Finch

Signed Date 13 April 2018

Upper Tribunal Judge Finch