



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

Appeal Number: PA/10205/2019 (P)

THE IMMIGRATION ACTS

**Decided without a hearing
Under Rule 34 (P)
On 9 June 2020**

**Decision & Reasons Promulgated
On 22 June 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**B I
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Obhi promulgated on 21st January 2020 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. The appellant sought permission to appeal which was granted by a Designated Judge of the First-Tier Tribunal in the following terms:
 - "1) In light of the current country guidance and the age of the appellant, it is arguable that the appellant could not have left Eritrea illegally and is therefore in the category of individuals at risk.
 - 2) Similarly the appellant's sur place activities are such arguably there is a potential risk to the appellant on return to Eritrea. The Damian point arises. It is arguable that the Judge has merely looked at the motive of the appellant is determinative of whether or not he

would be at risk of persecution on return rather than how potential persecutors will view the appellant's conduct.

3) In the circumstances the grounds may be argued."

3. On 2 April 2020, in accordance with the Covid-19 arrangements within the Upper Tribunal directions were sent to the parties indicating a provisional view had been reached that it was appropriate to determine the question of whether the First-tier Tribunal's decision involved the making of an error of law and, if so, whether that decision should be set aside, without a hearing. The party's views on this proposal were sought within a specified structured timescale.
4. The appellant's submissions were received dated 5 May 2020.
5. The Secretary of State's representative provided her response in a letter dated 6 May 2020 in which it is stated: "*In consideration of all relevant material along with the grounds and the grant of permission the respondent does not oppose the appellant's application for permission to appeal. The Tribunal are invited determine the appeal with a fresh oral (continuance) in the First-tier Tribunal*".
6. A reply received from the appellant's representatives dated 11 May 2020 states that in light of the respondent's response the proper approach if for the matter to be returned to the First-tier Tribunal for an oral hearing to be conducted *de novo*.

Error of law

7. It is not in dispute between the advocates that the Judge has erred in law in a manner material to the decision to dismiss the appeal for the reasons set out in the application seeking permission to appeal and the grant of permission to appeal.
8. I set aside the decision of the First-tier Tribunal Judge with no preserved findings. The parties agree that it is appropriate in all the circumstances for the appeal to be remitted to the First-tier Tribunal but that is a matter for the Upper Tribunal.
9. There is arguable merit in the appellant's representative's assertion that in light of it not being in dispute that the appellant is a national of Eritrea and of national service age, who had been called up for and commenced national service, who sought protection in Italy, and who entered the United Kingdom in 2009 and maintain contact with the respondent who had made no attempt to remove him, that the Judge was required to deal with the question of how the appellant will be perceived on return and in particular whether as he is of draft age he will be perceived as the draft evaders or deserter, in accordance with the country guidance case law. It also arguable the Judge was required to engage with the reasons given by the appellant for his comments in relation to Italy, the appellant's sur plus activities for the Eritrea National Salvation Front in the UK in light of the fact the evidence showed the Eritrean authorities operate a network of spies and are particularly interested in political organisation gatherings and protests against the regime and any risk this will create for the appellant on return, and to consider all the material with the required degree of anxious scrutiny.

10. The above exercise will require new and far more detailed consideration and further primary findings of fact which may require the submission of additional evidence and further consideration which can be undertaken before the First-tier Tribunal, which is the specialist fact-finding Tribunal.
11. In accordance with the Practice Direction regarding remittal of appeals to the First-tier Tribunal I consider it is appropriate in all the circumstances of this appeal, and in light of the prevailing situation, for the appeal to be remitted to the First-tier Tribunal sitting at Birmingham to be heard afresh by a judge other than Judge Obhi.

Decision

12. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the Birmingham Hearing Centre to be heard afresh by a judge other than Judge Obhi.**

Anonymity.

13. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 9 June 2020