



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2021-000786

First-tier Tribunal No: PA/51772/2020  
IA/00461/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated**  
**On 12 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**  
**DEPUTY UPPER TRIBUNAL JUDGE PARKES**

**Between**

**DFE**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Heard at Birmingham Civil Justice Centre on 22 September 2022**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant was born on the 2<sup>nd</sup> February 1977 and is a citizen of Eritrea. The Appellant's immigration history is set out in full in the Tribunal papers. Having previously had an appeal dismissed the Appellant had applied by way of further submissions, the application was refused, and the Appellant

appealed. His asylum claim was refused by Judge Athwal sitting in Birmingham in her decision promulgated on the 15<sup>th</sup> September 2021. The Appellant sought permission to appeal to the Upper Tribunal which was granted leading to hearing before us on the 22<sup>nd</sup> September 2022.

2. At the hearing on the 22<sup>nd</sup> September 2022, in the light of the previous findings made and the current situation in Eritrea, the Home Office was asked if the appeal was still contested. The Home Office was granted time to consider the position. There has been a delay in producing this judgment as an email from the Home Office to the Upper Tribunal was not brought to our attention.
3. Mr Williams confirmed later in written submissions that the Appellant's appeal would have to be allowed. The Appellant had previously been found to have performed national service in Eritrea. It was conceded by the Home Office that that judicial finding engaged the guidance in MST and Others (national service - risk categories) Eritrea CG [2016] UKUT 443 (IAC) and the Appellant is still in the age range where national service is required.
4. Having regard to the current situation in Eritrea and the concession made by the Respondent in light of the previous findings the appeal has to be allowed on article 3 ECHR grounds.

## DECISION

5. For the reasons given we find that there was an error in the decision of the First-tier Tribunal which we set aside. We substitute a decision to allow the appeal.

**M Parkes**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 March 2023**