Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10952/2019

THE IMMIGRATION ACTS

Conducted by Remote Hearing	**Decision & Reasons Promulgated**
On 24 July 2020	**On 7 September 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

A M
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Pratt, Legal Representative, Tann Law Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and so is entitled to privacy.

2. This appeal was conducted by remote hearing. I am grateful to both representatives for their willingness to experiment with this new technology which appears to have worked entirely satisfactorily.

3. This is an appeal by a citizen of Ethiopia against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing him asylum or any other kind of international protection. Permission to appeal was granted by First-tier Tribunal Judge Keane. He gave quite detailed reasons for giving permission but really two points emerge. First, and foremost, the Judge has disagreed with the expert evidence of a Dr Bersisa Berri but although the judge has clearly disagreed there is no analysis of Dr Berri's evidence or no proper explanation for coming to a different conclusion. No-one suggests that the judge has to follow the expert but when a different view is taken it must be plain why that view has been taken. It is not plain to me and Ms Everett, with characteristic realism, accepted it was not plain from the face of the Decision and it was going to be difficult for her to defend the decision.

4. There was, I think, agreement that the decision was unsatisfactory and had to be set aside.

5. I consider then what findings if any should be preserved. Clearly findings should be preserved if they can be, perhaps particularly findings that are favourable to the appellant but the difficulty here is that it is not plain what the judge accepted. There are some things that the judge plainly did not accept but we find in paragraph 49 an indication that an explanation is plausible. It is well understood that an explanation that is plausible is not necessarily truthful and a finding that something is "plausible" is not a finding that these things happened. However the used of the expression leaves open the possibility that the judge is thought to have accepted something when that is not the case.

6. I find that it would be wrong for this appellant to be tied by any of the decisions that have been made. The reasoning is inadequate and the findings are inadequate.

7. I think with the consent of the parties but certainly because it is in my judgment, the right thing to do, I set aside the decision of the First-tier Tribunal. Given there had been no proper findings made and that is not the appellant's fault in any way it seems to me desirable that the appeal is reheard in the First-tier Tribunal in front of a different judge.

Notice of Decision

8. The First-tier Tribunal erred in law. The decision is set aside. The appeal will be determined again in the First-tier Tribunal before a different judge.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 August 2020