



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-002784
(PA/00823/2021)**

THE IMMIGRATION ACTS

**At the Upper Tribunal Decision & Reasons Promulgated
(Immigration and Asylum Chamber) On the 16 November 2022
On the 25 October 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NHN

Appellant

And

Secretary of State for the Home Department

Respondent

DECISION AND REASONS

1. The Appellant is a national of Namibia born in 1993 who seeks protection and leave on human rights grounds.
2. On the 13th March 2022 the First-tier Tribunal (Judge Bircher) dismissed her appeal, rejecting inter alia the Appellant's claim that her father was a SWAPO activist.
3. The Appellant was granted permission to appeal to this Tribunal on the 9th May 2022 by Judge Nightingale, who considered it arguable that Judge Bircher erred in going behind a concession of fact made by the Secretary of State, who had accepted the Appellant's father's

involvement in SWAPO. That error arguably infected the remainder of the credibility findings.

4. By her Rule 24 Response dated the 24th June 2022 Senior Presenting Officer Aboni agreed that the error was made out, and invited the Tribunal on behalf of the Secretary of State to set the decision of Judge Bircher aside, and to remit the appeal to be heard de novo in the First-tier Tribunal.
5. By her representatives email dated the 21st October 2022 the Appellant consented to this course of action. In view of the agreement between the parties the Tribunal agrees that the decision of Judge Bircher must be set aside and the decision remade in the First-tier Tribunal.

Anonymity

6. I am mindful that the Appellant continues to seek protection. Having had regard to paragraph 28 of Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private¹ I am therefore satisfied that it would be appropriate to make an order for anonymity in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her, any of her witnesses or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions and Directions

7. The decision of the First-tier Tribunal is set aside. The decision in the appeal is to be remade in the First-tier Tribunal by a Judge other than Judge Bircher.
8. There is an order for anonymity.

Upper Tribunal Judge Bruce

¹ Paragraph 28 of the Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private reads: In deciding whether to make an anonymity order where there has been an asylum claim, a judge should bear in mind that the information and documents in such a claim were supplied to the Home Office on a confidential basis. Whether or not information should be disclosed, requires a balancing exercise in which the confidential nature of the material submitted in support of an asylum claim, and the public interest in maintaining public confidence in the asylum system by ensuring vulnerable people are willing to provide candid and complete information in support of their applications, will attract significant weight. Feared harm to an applicant or third parties and "harm to the public interest in the operational integrity of the asylum system more widely as the result of the disclosure of material that is confidential to that system, such confidentiality being the very foundation of the system's efficacy" are factors which militate against disclosure. See R v G [2019] EWHC Fam 3147 as approved by the Court of Appeal in SSHD & G v R & Anor [2020] EWCA Civ 1001

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