



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

APPEAL NO: AA/06577/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11 December 2014

Determination sent
On 3 February 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SUKHJIT KAUR

Respondent

Representation:

For the appellant: Ms Pal, Home Office Presenting Officer

For the respondent: Mr Dhanji

DECISION AND REASONS

1. The respondent, a citizen of India, appealed against a decision by the appellant to remove her after an asylum claim had been rejected. The appeal was dismissed on Refugee Convention grounds but allowed on the basis of humanitarian protection and under article 3 of the ECHR. The first ground of appeal argues that the judge wrongly conflated article 3 of the ECHR with article 15 of the qualification directive. Whilst the judge “did not close the door” on this point he clearly saw no merit in it. There may be cases where

there is a meaningful difference between the two bases of protection but there is none here. I conclude that there is no error in law here.

2. The judge was more favourably impressed by grounds 2 and 3. These read:

4. However, the second and third grounds are arguable. The Secretary of State argues that the judge failed to have regard to the impact assisted voluntary returns package might have. It is clear that the availability of the package was mentioned in the reasons for refusal letter of 22 August 2014. The principle reason given by Judge Nicholls for allowing the appeal on humanitarian grounds and under article 3 ECHR was that the appellant and her children faced destitution on return. The availability of a support package should have been considered since the presenting officer relied on the reasons for refusal letter and the failure to engage with that evidence or to give reasons for not doing so is arguably an error on a point of law.

5. The third ground is in similar terms and argues that the judge failed to give adequate reasons for rejecting the possible support from charities in India. The judge does not indicate why he rejected the background country evidence about the availability of charities in India. It was a relevant issue and evidence of the availability of such support was set out in the reasons for refusal letter.

3. It was argued that the trial judge was entitled to reach the conclusions that he did. There is, however, no doubt that the judge did not deal with the matters set out in the paragraphs of the grant of permission set out above and they are clearly relevant to the decision. It is impossible to conclude that the judge would have reached the same conclusion had he considered those matters. The determination therefore contains an error of law.

4. As a crucial part of the case has not been dealt with it is right that this case should be remitted to the First-tier Tribunal. The case is remitted to Taylor House for a fresh decision to be made by any judge other than Judge Nicholls.

The appeal is accordingly allowed

Designated Judge Digney
Deputy Judge of the Upper Tribunal

15 February 2015