



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12405/2017

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2018

Decision & Reasons Promulgated
On 07 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR G W P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan, counsel instructed by Thompson & Co Solicitors
(Wimbledon)
For the Respondent: Mr C Howells, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, date of birth 31 March 1958, a national of Jamaica, appealed against the Respondent's decision, dated 13 November 2017, to refuse an asylum claim and on Humanitarian Protection grounds made pursuant to an application of 11 September 2017. His appeal came before First-tier Tribunal Judge Abebrese who, on 23 January

2018, dismissed the appeal, both on asylum and protection as well as Article 8 ECHR grounds.

2. Permission to appeal was given by First-tier Tribunal Judge Grimmett on 6 March 2018 and it would appear, although it is not clear entirely, that it was on all grounds as sought, dated 6 February 2018. The two challenges are essentially these: First, that the Judge failed to make in his decision any reference to Section 55 of the BCIA 2009, and give any consideration to the impact of the Appellant's removal on the best interests of his partner's two children. Second, the criticism is that the Judge's rejection of the asylum/protection claim had failed to give adequate reasons for the adverse conclusions in respect of the claim.
3. Mr Howells for the Secretary of State wholly correctly accepts that the Judge did not address the considerations of the best interests of the children, or indeed the impact of the Appellant's removal from the life of the children and its potential consequences, or indeed of their wellbeing. So far as the second ground is concerned, Mr Howells did not accept there is a lack of sufficient reasons and he argues that the Judge addressed the evidence, not least the extraordinarily late claim for protection which had led to the claim in September 2017. The Judge was certainly in that context entitled to reach a view that the Appellant was making a last-ditch attempt to remain in the UK, as the Judge put it, "after he had exhausted all avenues which have been open to him".
4. The fact is that the Judge then set out in the context why he did not find the late claim credible, various reasons set out principally in paragraph 31 of the decision. It seemed to me on a fair reading of the decision the parties to the decision could tell why the decision was adverse to the Appellant and could review the matters which the Judge did not find credible which went to the claim that the Appellant had been the victim of separate gangs in Jamaica.

5. The fact that I might have written it differently is not the end of the matter because, on a fair reading, in the context of the case as it had actually been put, and on the evidence that was actually being presented, the Judge was entitled to reach the view he did. Although it might have been better expressed, that is not of itself simply the basis for establishing an error of law.
6. The Court of Appeal has regularly indicated that the Upper Tribunal should be slow to interfere in the conclusions that a First-tier Tribunal Judge has reached, bearing in mind the Judge had the opportunity of hearing the evidence, considering the cross-examination, noticing the way in which the evidence progressed at the hearing, and was able to form views in the light of the evidence, which it is not said the Judge has failed to properly record or has omitted.
7. In these circumstances I conclude that on the second ground of appeal the Tribunal Judge has done enough to establish the considerations in respect of the belated asylum claim. However, it is clear that the Judge did err in failing to address the implications of the Appellant's removal for him and for the children, which it is said he forms a part of their upbringing and lives. I note that there is no substantive challenge to the conclusions the Judge had reached under the Immigration Rules.

NOTICE OF DECISION

8. In the circumstances I find that part of the Original Tribunal's decision on the Article 8 ECHR claim cannot stand. The matter will be returned to the First-tier Tribunal to be considered solely in relation to the Article 8 ECHR claim.

DIRECTIONS

- (1) The matter will be remade in the First-tier Tribunal, not before First-tier Tribunal Judge Abebrese.

- (2) List for hearing – two hours.
- (3) Any further documents relied upon in support of the Article 8 claim to be submitted not later than ten working days before the further hearing.
- (4) No interpreter is required.
- (5) Two witnesses.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

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

Signed

Dated 24 July 2018

Deputy Upper Tribunal Judge Davey