



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

Appeal Number: PA/05414/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 January 2019**

**Decision & Reasons Promulgated  
On 14 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**A M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.**

**Representation:**

For the Appellant: Mr O Thomas, Counsel, instructed by Duncan Lewis and Co

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

### **Introduction**

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge E M M Smith (the judge), promulgated on 24 September 2018, in which he dismissed the Appellant's appeal against the Respondent's decision of 11 April 2018, refusing his protection and human rights claims.
2. In essence, the Appellant's claims were put forward on the following bases. First, that he had been specifically targeted by a gang in St Kitts and would, if he returned, be at risk of serious violence once again. Second, and in any event, he would face very significant obstacles to reintegration into society of his home country, with reference to Article 8 in general and paragraph 276ADE(1)(vi) of the Rules in particular.

### **The judge's decision**

3. The judge found that the Appellant provided a credible account of past events in St Kitts [23] and [26]. He specifically found that the Appellant had been threatened by the gang in question, and indeed shot at prior to his departure from that country in 2011 [26].
4. The judge then goes on to address the issues of the future risk and state protection at [26]-[35], ultimately concluding that there would be no risk on return, or, if there was, a sufficiency of protection would exist.
5. Article 8 is dealt with in brief terms at [41]-[44].

### **The grounds of appeal and grant of permission**

6. The first ground of appeal attacks the judge's findings and conclusions on the protection issue. It is said that the judge failed to deal adequately with the unchallenged expert report before him, failed to have proper regard to a letter from the Deputy Prime Minister of St Kitts, and made factual errors.
7. The second ground goes to the Article 8 issue. It is said that the judge failed to address the numerous factors present in the Appellant's case to show that he would face very serious obstacles in reintegrating into the society of St Kitts. These factors included his mental health problems and his status as a so-called "deportee".
8. Permission to appeal was granted by First-tier Tribunal Judge Blundell on 18 October 2018. His focus was on the challenge to the Article 8 point, regarding it as arguable that the judge had failed to deal with the relevant

factors put forward by the Appellant. He saw less merit in the challenge to the protection issue, but nonetheless did not restrict the grant of permission.

### **The hearing before me**

9. Mr Thomas relied on the grounds of appeal.
10. Mr Clarke relied on statistics contained at G1 of the Respondent's bundle and page 102 of the Appellant's bundle (within the expert report) to show that the incidence of homicides in St Kitts was in fact very low, and that the authorities did take action against gang members. The judge had dealt adequately with the letter from the Deputy Prime Minister and the same was true in respect of the expert report as it related to the issue of state protection.
11. There appeared to have been two letters from the Appellant's mother, the first from 2018 and the second from 2015. In respect of the former, she had said nothing about any continuing threats made by the gang to her son (or indeed to her). The 2015 letter appeared to relate to matters occurring when the Appellant was still in St Kitts in 2011. Ultimately, the judge was entitled to conclude that there had been no actual threats against the Appellant since he left the country in 2011.
12. Mr Clarke acknowledged that the judge had made a factual error when stating that the gang leader had been shot dead. With reference to questions 35 and 36 of the asylum interview, the Appellant had not in fact said this. Mr Clarke submitted that this factual error was immaterial.
13. In respect of the Article 8 issue, Mr Clarke submitted that even if the judge had dealt fully with the factors put forward, the Appellant could not have succeeded in any event.
14. In reply, Mr Thomas emphasised the point that the assessment of risk was not concerned with the situation whilst the Appellant was still in the United Kingdom, but what might happen once he returned to St Kitts.
15. At the end of the hearing I reserved my decision.

### **Decision on error of law**

16. This has not been an easy case to decide but, after careful consideration and by a relatively narrow margin, I conclude that there are material errors of law in the judge's decision. My reasons for this are as follows.
17. I have endeavoured to read the judge's decision holistic and in a sensible manner. I fully appreciate that not each and every aspect of the evidence

need be dealt with in detail when reaching a decision. The corollary of this proposition is that relevant aspects of the evidence going to core issues must be dealt with clearly and with sound in my view reasoning.

18. In my view the judge has failed to adequately address the expert report on the issue of risk to the Appellant *on return* to St Kitts (as opposed to whether threats had been made against him whilst in the United Kingdom) and whether or not he could be afforded sufficient state protection.
19. It is significant to note that the detailed expert report went unchallenged by the Respondent at the hearing [24]. The expert was of the view that the authorities of the St Kitts were, "not fully capable of providing the level of full-time protection required to sufficiently protect a person from attacks or persecution by gang members." (see pages 119 and 132 of the Appellant bundle). This conclusion (which followed a not insubstantial analysis of source materials) is not entirely unambiguous: on its face, it may be said that it does not reflect the correct legal test for state protection set out in, for example, Horvath [2000] UKHL 37 or Bagdanavicius [2003] EWCA Civ 1605. Yet, that was the expert evidence before the judge.
20. The judge deals with this in [28]. He appears to significantly reduce the value of that evidence on the basis of two considerations. The first is that the expert had apparently conducted her research within a limited timeframe. The problem with this reason is that the tight restrictions within which the expert may well have been operating does not, of itself, justify a significant production of weight. The expert has not said that her conclusions were tentative or that the information considered was inadequate. It may be the case that additional time would have permitted additional research, but in my view the judge was bound to deal with the unchallenged expert evidence as he found it and not to speculate as to what might have been said if more time had been available.
21. The second point made by the judge in [28] is that a single newspaper article from January 2018 made reference to a senior police officer asserting that homicides in St Kitts had been decreasing and that large numbers of firearms had been removed from the streets. Whilst the judge was entitled to take this single item of evidence into account, I conclude that this, even in combination with the first consideration discussed in the preceding paragraph, did not provide an adequately reasoned basis upon which to effectively disregard or so substantially diminish the importance of the expert's conclusions.
22. In respect of the evidence from the Deputy Prime Minister, Mr Richards, the judge drew the conclusion that the absence of any specific reference to a lack of state protection meant that such protection was available. To an extent, the judge is correct in pointing out that no express mention is made of state protection in the letter dated 11 September 2018. However, the letter does state that if the Appellant returned to St Kitts, having fled "in fear for his life", he would meet a "similar fate". There is a clear

implication here that the Appellant would in fact be harmed by the gang. Although not referred to by the judge in his decision, I note that Mr Richards had previously written a letter in support of the Appellant in March 2015 in which he did specifically state that the authorities did not have the resources to offer protection two young men who are threatened by gangs (C22 of the Respondent's bundle).

23. I conclude that the judge has failed to adequately consider Mr Richards' evidence. He has drawn an inference from it without having due regard to what was in fact stated therein.
24. Mr Clarke has correctly accepted that the judge made a factual error in [29] as regards the leader of the gang who would threatened and attacked the Appellant in the past. Although not of the greatest significance, the judge has clearly taken account of a factor that did not exist.
25. Mr Clarke has relied on statistics to show that the underlying merits of the Appellant's protection claim were always very poor. I accept that on their face these figures indicate a small number of homicides in St Kitts in proportion to the population as a whole, and that prosecutions by the authorities are undertaken. However, the judge himself has not considered this aspect of the evidence and in any event, the Appellant's case was highly fact-specific. Whilst the overall number of homicides may be low, it *may* also be that there is a relatively high proportion of gang-related deaths (a possibility that would be of course much more relevant to the Appellant's case). The point is that none of this appears to have been canvassed before the judge and in my view it cannot properly be said that the Appellant's case was effectively unwinnable from the outset.
26. The issue of the mother's evidence clearly did present an obstacle in the path of success for the Appellant. Having looked at the expert report and the reference to a letter from the mother contained therein (page 121 of the Appellant bundle) it is unclear as to whether she had received threats relating to her son or indeed directed towards herself after the Appellant left St Kitts in 2011. It is the case that in her more recent letter, the Appellant's mother made no mention of any such threats (76-77 of the bundle). In light of this, the judge was fully entitled to conclude that no such threat had been made in the intervening period.
27. This conclusion would clearly have pointed against there being a risk on return. However, the absence of continued threats whilst the Appellant was not even in St Kitts had to be weighed up in the context of whether there was a prospective risk once the Appellant returned to his home community within what is, on any view, a very small country indeed. In my view, when this is taken in conjunction with the other matters I have set out above, the absence of specific threats since 2011 could not have been a decisive factor.
28. Bringing all of the above together, the assessment of risk on return, including of course state protection, is materially flawed.

29. I turn to the Article 8 issue. In my view the judge has simply failed to engage with relevant evidence. A number of factors, including the Appellant's mental health and status as a "deportee" were put forward and supported by expert evidence. What the judge says at [44] is, with respect, inadequate. I disagree with Mr Clarke's suggestion that the Article 8 claim was bound to fail in any event.
30. I set the judge's decision aside.

### **Disposal**

31. The default route for disposal is for me to remake the decision in this appeal, but in this particular case I have decided that remittal is the appropriate course of action.
32. There is a fairly significant amount of fact-finding to be undertaken, both in relation to the protection and Article 8 claims. As regards the former, the issue of the Appellant's situation on return and the ability and/or willingness of the authorities to offer sufficient protection must be fully addressed. In terms of Article 8, there have been no findings about the Appellant's mental health and the position of so-called "deportees" in St Kitts.
33. I am always very wary of preserving any findings of fact when remitting an appeal to the First-tier Tribunal. Having said that, this is a case in which two findings can, and should, be preserved. There is nothing wrong with the judge's finding that the Appellant had been threatened and attacked by the relevant gang when in St Kitts, the same is true of the finding that no threats had been made against the Appellant or his mother since 2011.
34. Preserving these two findings does not in my view present an artificial barrier to the further consideration of this appeal by the First-tier Tribunal.

### **Decision**

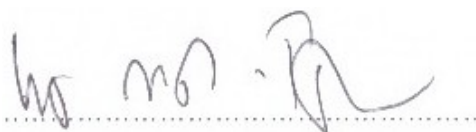
**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I set aside the decision of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

### **Directions to the First-tier Tribunal**

- 1) the appeal is remitted to the first-tier Tribunal;**
- 2) the remitted appeal shall not be heard by First-tier Tribunal Judge E M M Smith;**
- 3) the two findings of fact referred to in paragraph 33 of my decision, above, are to be preserved;**
- 4) the issues for consideration by the first-tier Tribunal on remittal shall be:**
  - i. will the Appellant face a real risk of persecution and/or Article 3 ill-treatment on return to St Kitts?**
  - ii. if so, will the authorities there be able and/or willing to provide sufficient protection against such a risk?**
  - iii. assuming that the protection claim fails, can the Appellant succeed by reference to article 8, both in respect of paragraph 276ADE(1)(vi) of the Rules and in its wider context?**



Signed

Date: 7 February 2019

H B Norton-Taylor  
Deputy Judge of the Upper Tribunal