



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

Appeal Number: AA/02349/2015

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 5 April 2016**

**Decision and
Promulgated
On 8 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

[S I]

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer
For the Respondent: Ms A White, instructed by Genesis Law Associates

DECISION AND REASONS

1. The Secretary of State appeals with permission to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Jerromes promulgated on 5 May 2015.
2. At the outset Mr McVeety agreed that he was in considerable difficulty in arguing the grounds.
3. Mr McVeety conceded that paragraph 51 of the reasons for refusal letter contained an explicit concession that the appellant was not excluded from humanitarian protection and accepted that at no juncture prior to the First-

tier Tribunal determining the appeal had that concession been withdrawn, amended or restricted. No supplementary letter had been issued by the Home Office and the point was not taken by the presenting officer. Mr McVeety acknowledged that a judge cannot go behind a factual concession of this kind and that in reality it was too late to raise any problems with this approach at this stage in proceedings.

4. Mr McVeety also acknowledged that the grounds did not seek to challenge the judge's finding that the appellant was credible. Although the grounds acknowledge that the judge accepted the appellant's own account that he had killed a person, the grounds failed to acknowledge that the judge had found that the appellant had done so in self defence. Once this finding was taken into account, there could be no accusation that the appellant committed a serious crime prior to arriving in the UK. Even if the judge had taken the approach suggested in the grounds, on the findings made, the outcome could only be that the appellant would not be excluded from humanitarian protection (paragraph 339D of the immigration rules (which transpose article 17 of the Qualification Directive (2004/83/EC) considered).
5. With such factors in mind, Mr McVeety did not seek to pursue the remaining ground because it would be immaterial. The remaining argument was that a judge should have regard to the exclusion provisions whether raised by the Home Office or not. Such a duty is well established in terms of the provisions excluding a person from benefiting from the Refugee Convention and no doubt it can be argued by analogy that the same approach should be taken in respect of the provisions excluding a person from humanitarian protection. But in this case it would make no difference to the outcome and I am not asked to make a finding either way.
6. Given the candour shown by Mr McVeety, for which I am grateful, there was no need to trouble Ms White for her submissions. Mr McVeety informed me that he was unable to concede the appeal (for reasons that remain hidden to me) and that he had no submissions to make other than to rely on the grounds as submitted.
7. As I announced at the end of the hearing, I have no hesitation in dismissing the Secretary of State's appeal and thereby upholding the decision of Judge Jerromes. The appellant is entitled to humanitarian protection.
8. I add that as stated in the grounds there has never been any challenge to the finding that the appellant is entitled to benefit from the protection offered by article 3 ECHR. The question has been whether the appellant is entitled to the benefits of humanitarian protection which gives him potentially stronger rights in the UK. It should be clear from my findings and decision that he is so entitled.

Decision

The Secretary of State's appeal to the Upper Tribunal is dismissed.

The decision and reasons statement of First-tier Tribunal Judge Jerromes does not contain an error of law and is upheld.

Signed	Date
Judge McCarthy	
Deputy Judge of the Upper Tribunal	