Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/04564/2019**

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 22 August 2019	**On 03 September 2019**

Before
DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between
VAN LOI HA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sarwar of counsel for Binas Solicitors
For the Respondent: Mr Tan Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Plumptre, promulgated on 26 April 2019 which allowed the Appellant's appeal against the Respondents decision dated 27 February 2019 to refuse a human rights claim and to uphold an order of deportation under s 5(1) of the Immigration Act 1971 following a decision that deportation was conducive to public good after he was convicted of 5 counts of sexual assault.

The Judge's Decision

3. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Plumptre ("the Judge") allowed the appeal against the Respondent's decision. The Judge found that it would be unduly harsh for both the Appellants partner and his children if he were deported.

4. Grounds of appeal were lodged arguing that the Judge gave no reasons for why it would be unduly harsh for the children or partner to remain in the UK without the Appellant.

5. On 15 July 2019 Upper Tribunal Judge Pitt gave permission to appeal.

6. At the hearing I heard submissions from Mr Tan on behalf of the Respondent that

   (a) He relied on the grounds of appeal.

   (b) There was a lack of reasoning in relation to the issue of it being unduly harsh on his partner and children to deport the Appellant.

   (c) He also argued that in respect of the Appellants relationship with his partner the provisions of paragraph 399(b) were conjunctive and the issue of it being unduly harsh was not relevant if the relationship was formed at a time when the Appellants status was either illegal or precarious. The

Appellant in this case never had settled status and if that was accepted then the provisions of s 399(b) were not engaged.

7. On behalf of the Appellant Mr Sarwar submitted that :

   (a) At first blush no reasons were given for the conclusions drawn by the Judge but context was everything and the reasons could be read into the decision by refence to other background material.

   (b) The Judge set this decision in the context of a previous decision of Judge Saffer where he found that the Appellants partners circumstances were unique as she had been the victim of trafficking at a young age and removing her from the support of her partner would make her ill and it was not in the child's best interests for this to happen.

   (c) In respect of the reasons given while the Judge does not give 'chapter and verse' and the findings are not replete with reasons but she states 'given the circumstances of her early and teenage years' it would be unduly harsh for his partner if the Appellant were removed.

8. In reply Mr Tan on behalf of the Appellant submitted

   (a) In relation to factors not covered by the statutory framework the Judge would have had to identify those factors and no exceptional circumstances applied.

   (b) Judge Saffer was applying a different test in a historical scenario 6 years ago.

   (c) None of the issues raised by Mr Sarwar are in the Judge's decision but have to be 'read into' it.

   (d) The Appellant did not have settled status and therefore the provisions of s 399 (b) did not apply relying on Terrelonge (para 399(b) [2015] UKUT 00653 (IAC)

The Law

9. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

> *"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."*

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made a number of material errors of law.

11. In relation to the Appellants relationship with his children the Judge repeats on a number of occasions that it would be unduly harsh for them if the Appellant were removed but no where in the findings does she give a reason for this conclusion nor is there any engagement with the meaning of the phrase and what factors in this case meet that test. I do not accept that a decision in an asylum case made 6 years ago and applying entirely different legal tests could be read as being determinative of the issue or that a requirement to read reasons into a decision by reference to background material that did not form part of the findings meets the requirement of clarity .

12. In relation to the relationship with the Appellants partner the Judge was wrong in law at paragraph 31: the Appellants status was at all times precarious as he did not have settled status. Terrelonge is the most recent decision confirming how the courts must interprete the provisions of 399 (b) (i). Given that the Appellant does not meet the requirement of settled status he cannot benefit

from 399(b) in relation to his relationship with his partner and no further assessment of the unduly harsh provisions in relation to his partner under this section was required.

13. These errors I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.

14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

15. In this case I have determined that the case should be remitted because there are no clear findings as to core issues in this case. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

16. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

Signed Date 24.8.2019

Deputy Upper Tribunal Judge Birrell