Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01031/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 January 2020	**On 4 March 2020**

Before

THE HONOURABLE LORD UIST
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TY
(ANONYMITY DIRECTION MADE)

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. We find that it is appropriate to continue the order. 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

Representation:

For the Appellant:	Mr D. Clarke, Senior Home Office Presenting Officer
For the Respondent:	Mr P. Haywood, instructed by Duncan Lewis & Co Solicitors (Harrow Office)

DECISION AND REASONS

1. For the sake of continuity, we shall refer to the parties as they were before the First-tier Tribunal although technically this is an appeal by the Secretary of State to the Upper Tribunal.

2. The appellant (TY) appealed the respondent's (SSHD) decision dated 01 February 2019 to refuse a fresh protection and human rights claim in the context of deportation proceedings. First-tier Tribunal Judge Ross ("the judge") allowed the appeal in a decision promulgated on 21 October 2019. The judge set out the issues raised in the fresh claim. He considered the history of the claim and the fact that a previous appeal was heard by the First-tier Tribunal in 2004.

3. The judge noted that there was evidence to suggest that the appellant was a vulnerable witness and treated him as such [12]. It seems that there was some agreement at the beginning of the hearing that the appellant would not give oral evidence although he attended the hearing. Other witnesses, including the appellant's brother and his wife also attended the hearing. None of those witnesses were called or were asked to be cross-examined.

4. The core of the previous claim was broadly accepted by an earlier First-tier Tribunal judge. The fresh claim relied largely on the applicant's activities for the TGTE in the UK. The Secretary of State expressed doubts about the nature and extent of those activities in the decision letter. The Secretary of State made the following points (i) the evidence did not show that he was a high-level member of the TGTE; and (ii) even if he had carried out some activities for the organisation it was asserted that he had done so in a cynical way to bolster a fresh claim.

5. Having set out the background to the case the First-tier Tribunal decision continued under the heading "My findings". The judge noted that the claim was based solely on the appellant's *sur place* activities. He considered what was said by the previous First-tier Tribunal judge [22]. The judge set out the appellant's evidence about what happened when he was arrested trying to leave the UK on a false passport [23-25]. He also set out the appellant's evidence relating to his activities for the TGTE. He went on to outline the appellant's evidence relating to his family life with his wife and two children in the UK, who have been recognised as refugees [24-26].

6. The judge went on to set out the evidence given by the appellant's wife as to the nature of their familial relationship [27]. He then outlined the fact that the appellant suffered from mental health issues and noted that the details were set out in a psychiatric report [28]. At [29] the judge observed that there was a letter from the TGTE dated 23 July 2017, which confirmed that the appellant was an activist. He noted the Presenting Officer's submission that nobody from the TGTE attended the hearing to give evidence, but then stated that he could place some weight on the TGTE letter. Although it seems clear that the judge considered the letter, he did not explain why he placed weight on it.

7. The only other place in which the judge made a finding was at [30], where he said:

> "The essential issue is whether the appellant is at real risk of persecution or harm in Sri Lanka. The country information report on Sri Lanka identifies that 'there are reports of arrests and detentions, however the scale and extent is difficult to quantify'. I have considered the categories of persons at risk as set out in GJ and Others (post civil-war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and am satisfied that the appellant could fall into a risk category as a person seeking to destabilise the state through his sur place activities."

8. The judge went on to state that as a result of his findings the appellant was entitled to be granted asylum and therefore fell within an exception to automatic deportation. That was the extent of the findings made by the judge in relation to the protection claim.

9. The judge moved on to consider the human rights claim under Article 8 of the European Convention. His findings were confined to three short paragraphs at the end of the decision [32-34]. At [32] he found that the appellant did not meet the exceptions to deportation contained in paragraphs 399(a) or 399(b) of the immigration rules because his children were not qualifying children and his relationship with his wife was formed when his immigration status was precarious. The judge correctly went on to say that if the appellant did not meet the exceptions to deportation that the public interest in deportation could only be outweighed by other factors if there were 'very compelling circumstances' over and above the exceptions.

10. When turning to look at the balancing exercise under paragraph 398 or section 117C(6) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002") the judge's findings were confined to the last two paragraphs of the decision, as follows:

> "33. I find that there are such very compelling circumstances in this case namely, the appellant's extremely precarious mental health, his genuine and subsisting parental relationship with his two children who are only 5½ and 4½ years old and that the appellant lives within a family unit with his wife and two young children who have been granted asylum and are unable to return to Sri Lanka.
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> 34. Section 117C of the 2002 Act (1) provides that the deportation of foreign criminals is in the public interest and (2) the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. It was accepted by Mr Armstrong on behalf of the respondent, that the appellant's only criminal offence, for which he was sentenced to twelve months' imprisonment, was not high on the scale of criminal offending. The appellant is not a serious criminal or a danger to the public."

Decision and reasons

11. The Secretary of State appeals the First-tier Tribunal decision on two grounds. The same legal point is made in both. It is asserted that the judge failed to give adequate reasons for his decision. It is not suggested that his conclusions were outside a range of reasonable responses to the evidence, but of course it is important that a judge gives adequate reasons so that those reading the decision can understand how and why he came to the decision he did.

Ground 1 – protection claim

12. On behalf of the appellant, Mr Haywood took us through the context in which the case was considered, which included the fact that the appellant was treated as a vulnerable witness and that none of the witnesses were cross-examined. He said that it was open to the judge to make the findings that he did under the heading "My findings" and that it was not necessary for him to state on each occasion that he was making a finding. He referred to various parts of the evidence which, he said, supported the judge's apparent acceptance of the evidence relating to the appellant's activities for the TGTE. In our assessment the findings said to have been made by the judge at [22-28] amounted to nothing more than statements of the evidence. It might be the case that the evidence was capable of being accepted. However, if it was accepted, we are none the wiser as to why the judge accepted the evidence, nor did the judge appear to address any of the issues raised by the Secretary of State when coming to his conclusions. At [29] the judge made a finding that he placed some weight on the letter from the TGTE, but the decision leaves us none the wiser as to why he did so.

13. Even if Mr Haywood's submissions were taken at their highest, we consider that there are still problems relating to the judge's overall conclusion at [30] regarding the application of the risk factors contained in *GJ*. It is not possible to discern (i) which particular risk category he identified; or (ii) his reasons for concluding that the appellant fell into that category. Some of the evidence before the judge might support the appellant's claim to be at risk on return given that the TGTE is a proscribed organisation (we note that this issue was not considered by the Upper Tribunal in *GJ*), but we are unable to ascertain what evidence the judge relied on in coming to his conclusion. We conclude that inadequate reasons were given to explain the conclusions relating to the protection claim.

Ground 2 – human rights claim

14. Mr Haywood argued that the judge had regard to the relevant legal framework relating to the assessment of Article 8. We accept that the judge mentioned section 117C NIAA 2002 and was aware of the exceptions to deportation contained in that provision, which are echoed in the immigration rules. It was open to the judge to consider the various factors he identified at [33]. What we find is missing from the assessment is any explanation as to how or why the judge felt that those factors should be given the kind of compelling weight required to outweigh the public interest in deportation. The judge outlined relevant factors but failed to explain how he evaluated them or why he considered them to be sufficiently compelling.

15. For these reasons, we conclude that the First-tier Tribunal decision involved the making of an error of law. The nature and extent of the issues that will need to be remade are such that the parties agreed that it was necessary to remit the case to the First-tier Tribunal for a fresh hearing before a different judge.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The case is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 12 February 2020

Upper Tribunal Judge Canavan