



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00111/2016

THE IMMIGRATION ACTS

Heard at Birmingham
On 10 September 2018

Decision & Reasons Promulgated
On 20 September 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

REDON [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnik, instructed by TRP Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Pooler promulgated on 17 January 2017.
2. The appellant entered the United Kingdom on 19 November 1999 with his parents and sister, having fled Serbia and Montenegro, although it is accepted now that he is to be regarded as a citizen of Kosovo as he is of Albanian ethnicity.

3. Materially, after an appeal by his mother against the refusal of her asylum, she (and the appellant as her dependant) was granted humanitarian protection on 11 November 2005, leave to remain being granted until 11 November 2010.
4. On 9 November 2010 the appellant's mother applied for indefinite leave to remain for herself, the appellant and his sister. Indefinite leave to remain was granted to all three on 1 May 2013.
5. On 18 August 2016 the respondent took a decision to deport the appellant on account of his criminal convictions on the basis that his presence was not conducive to the public good given his history of offending. An earlier decision to deport the appellant came before Judge Grimmett sitting in the First-tier and which was promulgated on 7 September 2015. Judge Grimmett allowed the appeal on the basis that the decision was unlawful because it was an implicit decision to revoke protection status yet the appellant's protection status had not been considered.
6. The respondent then made a fresh decision to deport, which gave rise to this appeal which then came before Judge Pooler. He concluded that he was not bound by Judge Grimmett's decision and concluded also that the grant of immigration status in 2005 was not one made pursuant to the Qualification Directive nor was he satisfied that the grant of indefinite leave to remain was on that basis. Accordingly, he concluded that this was not a revocation of protection case.
7. Although permission to appeal against the decision on the basis that the judge had erred in law in concluding that this was not a revocation of a grant of humanitarian protection, permission was refused by the First-tier Tribunal and again on renewal to the Upper Tribunal; permission for judicial review of the decision of the Upper Tribunal was, however, granted by the higher court and the matter was then remitted to the Upper Tribunal. On 22 November 2017 the Vice President granted permission to appeal.
8. Mr Mills explained that it was the Secretary of State's case that the grant of indefinite leave to remain in 2013 was in fact a grant of humanitarian protection. He produced an extract from the CID database which confirmed that there had been a consideration as to whether there had been a change in the situation, in effect whether the cessation clause could apply, and it had been concluded that this was not so. He explained that the Home Office had introduced a category of application called settlement protection in 2010 and on that basis, the deportation decision had to be taken in the way that it was a revocation which had not been done. He accepted that the decision made in 2016, subsequent to Judge Grimmett's decision, had not treated the decision as a revocation of protection which was an error. He accepted that this was relevant as it shifts the burden onto the Secretary of State and on that basis he accepted that the decision of the First-tier Tribunal was unlawful.
9. He accepted that the appellant's indefinite leave to remain was still extant and it was agreed between him and Mr Karnik that a short decision should be prepared confirming the situation.

10. Given the concession by Mr Mills that this is indeed a revocation of protection appeal and that thus the burden is on the Secretary of State, a decision of the First-tier Tribunal manifestly involved the making of an error of law and that an incorrect burden of proof was applied.
11. Mr Mills indicated that he was not in a position formally to concede the matter but offered no evidence and made no submissions in support of the proposition that the appellant's humanitarian protection should be revoked. In the circumstances, and bearing in mind that the burden is on the Secretary of State as he accepts, I allow the appeal on the basis that the Secretary of State has failed to show that humanitarian protection should in this case be revoked.
12. I therefore allow the appeal on that basis. It is observed that in this case, as is recorded in the refusal letter of 18 August 2016 that while a decision to deport was made, no deportation order has yet been issued.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remake the appeal by allowing the appeal on humanitarian protection grounds.

No anonymity direction is made.

Signed

Date 18 September 2018



Upper Tribunal Judge Rintoul