



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

Appeal Numbers: HU/16484/2017
RP/00155/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 19 March 2019**

**Decision & Reasons Promulgated
On 11 April 2019**

Before

**LORD UIST
(SITTING AS AN UPPER TRIBUNAL JUDGE)
UPPER TRIBUNAL JUDGE CANAVAN**

Between

**A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

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 and child welfare 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 T Bobb, Solicitor of Aylish Alexander Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 21 September 2017 to cease refugee status and a subsequent decision dated 01 December 2017 to refuse a human rights claim in the context of deportation proceedings.
2. First-tier Tribunal Judge Aujla ("the judge") dismissed the appeal in a decision promulgated on 30 November 2018.
3. The appellant appeals the First-tier Tribunal decision on the following grounds:
 - (i) The judge erred in his assessment of Article 1C(5) of the Refugee Convention. In particular, he failed to consider adequately the content of the letter from UNHCR dated 31 August 2017 and the relevant UNHCR guidelines. He failed to consider whether there had been a significant and non-temporary change in the circumstances in Turkey.
 - (ii) The judge failed to conduct a holistic assessment of the circumstances that were relevant to a proper assessment of Article 8. In particular, he failed to make any findings relating to the best interests of the children.
 - (iii) The judge failed to address the arguments relating to the respondent's exercise of discretion under paragraph 322(5) of the immigration rules.

Decision and reasons

4. Having considered the submissions made by both parties we conclude that there are material errors of law in the First-tier Tribunal decision and that it must be set aside.
5. First, in relation to the assessment of the Refugee Convention and whether the appellant's refugee status had ceased, whilst we accept that the judge mentioned the UNHCR letter, we conclude that the judge, as a matter of fact, failed to properly engage with evidence that was relevant to the assessment under Article 1C(5).
6. Similarly, although the evidence relating to risk on return in Turkey at the current time does not seem to have been particularised, and the findings that the judge made about the individual facts of the case were likely to be open to him, whether the appellant as an individual could return in safety still required a proper assessment of the background evidence, and it is that analysis which is missing from the First-tier Tribunal decision.
7. Secondly, in relation to the Article 8 assessment, we find that there was a failure to consider relevant matters. The judge's findings were confined to


the conclusions he came to at [41] of the decision. The judge failed to consider the fact that the very compelling circumstances test should be a holistic and cumulative assessment. It might include matters that come within the exceptions as well as any other matters that are of relevance.

8. While we accept Mr Avery's submission that this was an extremely serious offence and that in most cases a sentence of twenty years would outweigh any private and family life that a person has in the UK, there were unusual facts in this case, which included the passage of time since the appellant was released from prison, which was considerable, and during that time there is no evidence to show that the appellant committed any further offences or was a danger to anyone in the UK.
9. The grounds list matters that were argued to be relevant to a cumulative assessment of the appellant's circumstances. We find that the judge failed to conduct a holistic assessment to ascertain whether those circumstances, as a whole, amounted to 'very compelling circumstances' that might outweigh the public interest in deportation. The decision is devoid of any assessment of the best interests of the children who are still under 18 years old. We accept that this was an important decision that required anxious scrutiny and that the judge failed to consider a large number of matters that may have been relevant to that assessment.
10. The third point relating to paragraph 322(5) is irrelevant in light of our other findings. It is difficult to see why the respondent thought it necessary to rely on that aspect of the rules in the human rights decision dated 01 December 2017 when the decision was already being made in the context of deportation proceedings.
11. For these reasons we conclude that the decision involved the making of errors of law that may have made a material difference to the outcome of the appeal. The nature and extent of judicial fact finding necessary in order for the decision to be re-made is such that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal.

DECISION

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

The appeal is remitted to the First-tier Tribunal for a fresh hearing before a different judge.

Signed 
Upper Tribunal Judge Canavan

Date 09 April 2019