



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11530/2014

THE IMMIGRATION ACTS

Heard at Bennett House
On 13 May 2015

Determination Promulgated
On 20 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PD

ANONYMITY DIRECTION MADE

Respondent

Representation:

For the Appellant: Mr McVeety (Home Office Presenting Officer)

For the Respondent: None

DECISION AND DIRECTIONS

1. The appellant ('the SSHD') has appealed against a decision of First-tier Tribunal Judge Gurung-Thapa dated 24 February 2015. In this decision Judge Gurung-Thapa dismissed the appeal on asylum and human rights grounds but remitted the appeal to the SSHD to the limited extent that there be a lawful consideration and decision regarding the SSHD's s 55 duties.

Relevant background

2. The background that is relevant to this appeal can be briefly stated. The respondent ('Mrs PD') is a citizen of Bangladesh. She is married and they have a son who was born in December 2002. Mrs PD's husband has been in the UK since 2005. Mrs PD did not arrive in the UK with her son until 21 December 2011 and they have remained here since that date. Mr PD was granted limited leave to remain outside of the Rules on 10 July 2014 for three years. Mrs PD applied for asylum in April 2012 and that was refused on 9 December 2014.

Hearing

3. Mrs PD attended the hearing and alongside her husband and two supporters, one of who identified himself as the Pastor of the Church that the family attends. Mrs PD confirmed that she had not appealed to the Upper Tribunal against the dismissal of the asylum appeal and did not wish to do so.
4. Mr McVeety submitted that the Judge erred in law in remitting the s 55 consideration to the SSHD.
5. I indicated that I had some sympathy with the submission that the Judge should have dealt with s 55 for herself. I invited Mrs PD and the Pastor to set out their views on this. They agreed that the best course would be for Judge Gurung-Thapa to consider the s 55 issue in light of all the updated evidence.

Discussion

6. The Upper Tribunal has recently provided guidance on the approach to be adopted in determining whether or not the SSHD has breached s 55 and what should follow from this in MK (section 55 - Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC). This makes it clear that it is not necessary for the SSHD's decision letter to make specific reference to the statutory guidance. Judge Gurung-Thapa notes that no reference to the guidance was made in the decision letter in this case [73] but this does not justify a remittal. Judge Gurung-Thapa also indicates that the son should have been consulted and his wishes and feelings taken into account but it is implicit from the evidence available that the son's clear wish was to remain in the UK with both parents. In my judgment the SSHD's considered s 55 and that consideration cannot be said not to be in accordance with the law. In finding otherwise Judge Gurung-Thapa has erred in law.
7. MK also serves as a reminder that the decision in AJ (India) v SSHD [2011] EWCA Civ 1191 is authority for the proposition that where the First-tier Tribunal decides that a decision of the Secretary of State is not in accordance with the law on account of a failure to discharge the first of the s 55 duties the Tribunal is not obliged to remit the case to the Secretary of State for a

fresh decision. Even if Judge Gurung-Thapa was entitled to consider the s 55 duty as having been breached she should have gone on to consider whether this should result in a remittal to the SSHD or whether she could and should consider the matter herself. In failing to consider this, the Judge has erred in law.

8. I have considered whether I should remake the decision but I have been persuaded by both Mr McVeety and Mrs PD that this is a matter that should benefit from findings of fact regarding s 55 by the First-tier Tribunal, as there have been no clear findings. The directions set out below have been agreed and seek to ensure that all relevant evidence is available to the Judge when she considers the s 55 issue.

Decision

9. The decision of the First-tier Tribunal contains an error of law only in relation to s 55. I only set aside that part of the decision.
10. The s 55 issue is remitted to be heard by Judge Gurung-Thapa.

Directions

1. The s 55 issue only shall be considered on the first available date after 17 August 2015 before Judge Gurung-Thapa. TE: 2 hrs.
2. There shall be a Bengali interpreter booked for the hearing.
3. Before Friday 10 July 2015 the appellant shall file and serve a paginated bundle of all relevant documents relied upon to determine the s 55 issue including: witness statements from her son, herself, her husband and any supporters; independent evidence supporting the submission that her son's best interests are to remain in the UK; evidence addressing her husband's circumstances in the UK and why it would be unreasonable for him to relocate to Bangladesh.
4. Before Friday 31 July 2015 the respondent shall file and serve an updated decision / consideration of s 55 in light of the updated evidence.

Signed:

Ms M. Plimmer
Deputy Judge of the Upper Tribunal

Date: 15 May 2015