



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/05408/2015

THE IMMIGRATION ACTS

Heard at Field House, London

On the 13th July 2016
2016

Decision & Reasons Promulgated

On the 26th July

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

[S B]

~~(Anonymity Direction not made)~~

Claimant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant in the Upper Tribunal

Representation:

For the Claimant: Miss Fielden (Counsel)

For the Secretary of State: Mr Norton (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Steer promulgated on the 19th April 2016, in which he allowed the Claimant's appeal on humanitarian protection grounds and on Human Rights grounds under Article 3 of the ECHR.

2. The Secretary of State has sought to appeal against that decision for the reasons set out in full within the Grounds of Appeal. This is a matter of record and is therefore not repeated in full here. The Claimant's claim that he feared persecution in India, instigated by the father of his sister [R]'s previous female partner [S], who had threatened to kill the Claimant, as he had assisted his sister's escape to the UK, was accepted by First-tier Tribunal Judge Steer. Within the Grounds of Appeal it is argued that it was not clear as to why the Judge had concluded that [S]'s father would currently be interested in the Claimant, given that he had not lived in India since 2006, or as to how the Claimant would be known to [R]'s brother or as to why the Indian police or anybody else in India would have the slightest interest in him. It is argued that India is one of the largest countries and the second most populous country in the world and that the Claimant could safely internally relocate anywhere within the country. It is said that the Judge's finding at [88] the Claimant would have to visit the Mumbai Police Station in order to renew his passport is inadequately reasoned and is based upon supposition that the Claimant would not be able to obtain an Indian passport in the UK. It is argued that this point has been inadequately dealt with by the First-tier Tribunal Judge. It is further argued that the suggestion that there may be a "lookout circular" for the Claimant is also mere speculation and that the expert simply stated that this may be "possible", and that there was further no evidence to suggest that even if [S]'s father had succeeded in getting a Lookout Circular for the Claimant, or that the Claimant somehow had to go to Mumbai Police Station, that the Claimant would not have recourse to a legal remedy given that the Rule of Law does operate in India.
3. Permission to appeal has been granted by Deputy Upper Tribunal Judge Taylor on the 8th June 2016, in which she found that whilst the original grounds at first sight might have had the appearance of attempting to reargue the Secretary of State's case, the point made in the renewed grounds in relation to internal relocation has merit. But for the avoidance of doubt she found that all grounds may be argued.

4. It was on this basis that the case proceeded to the Upper Tribunal. Before the appeal hearing before me commenced, Miss Fielden handed up her brief written submissions, which I have fully taken into account. However, at the oral appeal hearing, Miss Fielden on behalf of the Claimant conceded that First-tier Tribunal Judge Steer had not adequately considered the possibility of the Claimant obtaining an Indian passport whilst still in the United Kingdom, such that he would not be entering India on emergency travel documents. She conceded further that in such circumstances the ability of the Claimant to safely internally relocate, if he had entered on a passport, has not been considered by the Judge and that in such circumstances the question of internal relocation had not properly been considered. Miss Fielden on behalf of the Claimant conceded that this was a material error of law and she did not oppose the decision of First-tier Tribunal Judge Steer being set aside and the case remitted back to the First-tier Tribunal.
5. However, she asked that there be preserved findings of fact in respect of the threat faced by the Claimant from [S]'s father and family in Mumbai. Mr Norton on behalf of the Secretary of State agreed that the case should be remitted back to the First-tier Tribunal in respect of the internal relocation issue, and that there should be preserved findings of fact in respect of the threat from [S]'s father and family in Mumbai, but he argued that the ability of the Claimant to live in his home area notwithstanding such threat, given what he argued would be a sufficiency of protection from the authorities in Mumbai and also the question of internal relocation, needed to be dealt with. Miss Fielden conceded that although First-tier Tribunal Judge Steer had mentioned the previous findings of Deputy Upper Tribunal Judge Reeds in respect of the ability of [S]'s father to bribe the police and detention centre wardens in respect of [R], were she to return to India, that First-tier Tribunal Judge Steer had not specifically dealt with the question of sufficiency of protection for the Claimant from the authorities in Mumbai itself.
6. In light of the above concessions, I do accept and find that the decision of First-tier Tribunal Judge Steer does contain material errors of law, in respect of his failure to properly deal with the question as to whether or not the

Claimant could obtain an Indian passport whilst still in the UK, such that he would not be returning to India on emergency travel documents, and that the Learned First-tier Tribunal Judge has not adequately dealt with the questions both of sufficiency of protection for this Claimant by the authorities in Mumbai, and further, the question as to whether or not the Claimant could, if having entered India on a passport obtained in the UK, or otherwise, safely internally relocate within India.

7. I therefore do set aside the decision of First-tier Tribunal Judge Steer, but as agreed between the parties, but I do preserve his findings in respect of the risk that the Claimant would face from [S]'s father and family in Mumbai. However, the questions of sufficiency of protection and internal relocation, do need to be dealt with again. Given the degree of fact finding that would be required in this regard, it is appropriate, as was agreed with the parties, for the case to be remitted back to the First-tier Tribunal for the questions of sufficiency of protection and internal relocation to be dealt with by a differently constituted First-tier Tribunal, so that the re-hearing is before any First-tier Tribunal Judge other than First-tier Tribunal Judge Steer.

Notice of Decision

The decision of First-tier Tribunal Judge Steer does contain a material error of law and is set aside. I do preserve the findings of facts of First-tier Tribunal Judge Steer in respect of the threat faced by the Claimant from [S]'s father and family in Mumbai.

The appeal is remitted back to the First-tier Tribunal to be reheard before any First-tier Tribunal Judge other than First-tier Tribunal Judge Steer.

Signed



Deputy Upper Tribunal Judge McGinty

Dated 17th July 2016

