



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

Appeal Number: RP/00100/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 6 December 2017**

**Decision & Reasons  
Promulgated  
On 06 July 2018**

**Before**

**THE HON LADY RAE  
sitting as a Judge of the Upper Tribunal  
UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[A O]  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Ms K McCarthy, Counsel instructed by Kesar & Co  
Solicitors

**DECISION AND REASONS  
(extempore decision)**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to

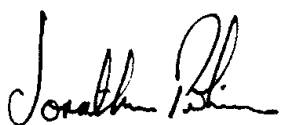
lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. We make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk and because the respondent might be a vulnerable witness whose health could suffer if his circumstances were publicised.

2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter the Claimant, against the decision of the Secretary of State to revoke his refugee status and to refuse him leave to remain on human rights grounds.
3. The claimant is subject to deportation having been sent to prison for four years by order of the Court of Appeal on the Attorney General's reference for serious offences which we need not explain in more detail here.
4. The First-tier Tribunal's decision puzzled us when we read it before the hearing because, although the decision was before us, we had difficulty working out why it might be thought right to allow the appeal. We have been very considerably assisted by the Claimant's Counsel, Ms McCarthy, who had the advantage of appearing at the hearing below. After considering her skeleton argument and submissions we have been able to piece together what happened.
5. The problem is that the judge has not explained in his Decision and Reasons, at least not in a way that we can understand, his reasons for reaching the conclusions that he did. We are very aware that it is a huge disappointment to the claimant to be told that he has "won" his appeal and then to have that taken away from him and we have thought carefully before making that decision. We have decided that we must make it because the reasons given by the judge in the decision are not sufficiently clear.
6. The Secretary of State criticised the decision in part for suggesting that all Armenians in Moscow risked persecution and in part for failing to identify the appellant's "very compelling circumstances" that were "over and above" those described in Exceptions 1 and 2 section 117C of the Nationality Immigration and Asylum Act 2002.
7. The key point that Ms McCarthy was able to explain to us is that the claimant is a man whose appearance in the past has been found to be unusually dark for his ethnicity and who has been singled out particularly for adverse treatment as a result. He says that this has manifested itself in various ways including particularly a serious attack when he was at school. He says that there is a great deal of intolerance towards people of his perceived ethnicity in Moscow society generally and possibly particularly in the armed forces.
8. We make it plain that we are not saying that we are persuaded by this evidence. If we were satisfied that this was right then we would not be making the decision that we do. We would be substituting a different decision. We are satisfied that there is a point there worthy of serious consideration and argument and it may be capable of supporting a decision to allow the appeal but the necessary findings of fact and reasons have not been explained satisfactorily.

9. Similarly we find there is extraneous evidence not considered properly in the Decision and Reasons that might support a finding that there are the very compelling circumstances over and above those in Exception 1 and 2 in this case. Particularly we look at the mother's ill-health and the vulnerabilities of the claimant's son.
10. It follows therefore that when we find the explanation inadequate we are then persuaded that the evidence needs to be looked at again. We cannot do that today. One of the reasons we cannot look at it today is that Mr Wilding is not prepared to deal with arguments raised by the Claimant in support of his separate contention that removal would violate his Article 3 rights because of mental health and suicide issues. Mr Wilding is not in any way to be criticised for not being prepared because he did not know that these points would be raised. They were raised perfectly clearly and properly in a Rule 24 notice which the Claimant was entitled to serve and rely on but they were not raised in the time available to enable Mr Wilding to prepare. It follows it that it cannot be the case today and in those circumstances we think it would be better that it be dealt with in the First-tier Tribunal where his appeal rights would be preserved.
11. We do not make directions of how the First-tier Tribunal should deal with this case but we wish to spell out clearly that is a case where a Case Management Review might be very sensible and thought should be given to the possibility of the Claimant having particular needs as a vulnerable witness. It may be that the parties can devise ways of minimising the amount of oral evidence that he actually has to give. Again we are giving no directions we are simply inviting the First-tier Tribunal to consider it at a Case Management Review.

#### Notice of Decision

We allow the Secretary of State's appeal. We set aside the decision and we direct that the case be heard again in the First-tier Tribunal.



Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 4 July 2018