



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004173

First-tier Tribunal No: PA/00851/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 December 2024

Before

UPPER TRIBUNAL JUDGE LODATO

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EE
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Dr Ibsi, Senior Presenting Officer

For the Respondent: Mr Holmes, counsel

Heard at Manchester Civil Justice Centre on 6 December 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. I have decided to maintain the anonymity order originally made in these proceedings by the First-tier Tribunal because the underlying claim involves international protection issues in that EE claims to fear persecution or serious harm on return to Egypt. In reaching this decision, I am mindful of the

fundamental principle of open justice, but I am satisfied, taking EE's case at its highest for these purposes, that the potential grave risks outweigh the rights of the public to know of his identity.

2. The Secretary of State appeals with permission against the decision, dated 27 June 2024, of First-tier Tribunal Judge Rakhim ('the judge') to allow the appeal on asylum and human rights grounds.
3. To avoid confusion, and for the remainder of this decision, I will refer to the appellant in these appellate proceedings, the Secretary of State for the Home Department, as the respondent and the respondent in the Upper Tribunal, EE, as the appellant, as they were before the First-tier Tribunal.

Background

4. The procedural background and immigration history are not in dispute between the parties. In brief summary, the appellant claims to fear the family of his former partner. His factual case was that he was falsely accused of raping his former partner and was forced to go into hiding from the authorities who had been corrupted by the family.

Appeal to the First-tier Tribunal

5. The appellant appealed against the refusal of the claim. The appeal was heard by the judge on 11 June 2024 before allowing the appeal asylum and human rights grounds in a decision promulgated on 27 June 2024. In the discussion section below, I will discuss any parts of the decision which are relevant to the grounds of appeal.

Appeal to the Upper Tribunal

6. The respondent applied for permission to appeal in reliance on a single ground, that the judge allowed the appeal on Refugee Convention grounds without applying the statutory scheme set out in ss. 31-36 of the Nationality and Borders Act 2022 and without adopting the sequential analytical approach commended by JCK (s.32 NABA 2022) (Botswana) [2024] UKUT 00100 (IAC)
7. In a decision dated 23 July 2024, First-tier Tribunal Judge Moon granted permission for the ground of appeal to be argued. The following observations were made in granting permission:

The appellant claimed asylum after 28 June 2022. Whilst some matters were not challenged on the part of the respondent, it is arguable that the Judge has made an error of law in not addressing each of the questions set out in section 32 NABA expressly and sequentially and by not clearly setting out which standard of proof applies to each aspect.

8. At the error of law hearing, I heard oral submissions from both parties. Mr Holmes conceded that the decision involved an error of law and invited me to set the decision aside and remake the decision by allowing the appeal on humanitarian protection grounds.

Discussion

9. Mr Holmes conceded that the decision involved a material error of law because the judge allowed the appeal on Refugee Convention grounds when the parties agreed that a convention reason did not underpin the protection claim. This much was clear from paragraph 8 of the appellant's skeleton argument which recognised that the appeal could not succeed on asylum grounds:

The Respondent states this claim is not one which falls within the scope of the Refugee convention, this is not disputed by the Appellant.

10. The procedural effect of the positions adopted by the parties was that the judge was only to consider the protection ground of appeal in the context of humanitarian protection. Consistent with the principle controversial issues which were in play, the judge could not allow the appeal on asylum grounds because the parties spoke as one in confirming that a refugee convention reason did not underpin the claim. At the risk of stating the legally obvious, an asylum claim cannot succeed if the risk of persecution is not for one of the five reasons set out in the convention.
11. It may be that the judge intended to allow the appeal on humanitarian protection grounds because the judge did not expressly find that a convention reason was engaged in the body of the decision. At [25] and [26], the judge couched the conclusions reached on risk on return in language which appears to be better suited to a decision to allow the appeal on humanitarian protection grounds. At [26] the judge refers to the risk of suffering "serious harm".
12. The respondent did not seek to challenge any of the other findings which underpinned the conclusions that the appellant was at risk and could not alleviate that risk by seeking the protection of the authorities or internally relocating.
13. I am satisfied that the decision involved a material error of law in allowing the appeal on asylum grounds.

Disposal

14. I agree with the position jointly adopted by the parties that the appropriate disposal is to set aside the decision while preserving all of the findings of fact. I remake the decision to dismiss the appeal on Refugee Convention grounds and allow the appeal on humanitarian protection and human rights grounds.

Notice of Decision

The decision of Judge Rakhim involved a material error of law. I set aside the decision while preserving all of the findings of fact. I remake the appeal by dismissing the appeal on Refugee Convention grounds and allow the appeal on humanitarian protection and human rights grounds.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 December 2024