



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00755/2013

THE IMMIGRATION ACTS

Heard at Newport
On 4 February 2014

Determination Promulgated
On 11 February 2014

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SS

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mr G Hodgetts instructed by Wilson Solicitors LLP

**NOTICE OF WITHDRAWAL
AND THE REASONS FOR THE TRIBUNAL GIVING CONSENT**

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. This is a notice consenting to the withdrawal by the Secretary of State of her case (namely her appeal) to the Upper Tribunal. Because of the circumstances leading to the application made orally at a hearing, I set out the background and my reasons. For convenience, I will refer to the parties as they appeared before the First-tier Tribunal.
3. The appellant is a citizen of the Democratic Republic of Congo ("DRC") who was born on 6 June 1993. The appellant came to the United Kingdom in 1998 when he was five years of age. In 2002, the appellant's father was granted refugee status and indefinite leave to remain and the appellant was granted the same leave as his dependent.
4. On 16 May 2011, the appellant was convicted at the Blackfriars Crown Court of one count of possession of a firearm when committing a Schedule 1 offence. On 11 October 2012, again at the Blackfriars Crown Court, the appellant was convicted of robbery. On 6 January 2012, the appellant was sentenced to five years and 6 months detention in a Youth Offenders Institution in respect of the count of robbery and a period of two years detention to run concurrently in relation to the offence of possessing a firearm.
5. On 9 April 2013, the Secretary of State made a decision to make a deportation order against the appellant under s.3(5)(a) of the Immigration Act 1971 on the basis that his deportation was conducive to the public good.
6. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 10 October 2013, the First-tier Tribunal (Judge Foulkes-Jones and Mr P Bompas) allowed the appellant's appeal. First, the First-tier Tribunal concluded that the appellant's deportation to the DRC would breach Article 3 of the ECHR. Having reviewed the evidence concerning the treatment of criminal deportees by the DRC on return, including a letter from the DRC Ambassador, the Tribunal concluded at para 9.18 of its determination that:

"9.18 Having regard to what we say above we find that the appellant's criminal history will be ascertained from what the DRC authorities already know about the appellant from their meeting with him and from when he is questioned on his return to Kinshasa; he will then be detained and as a result his Article 3 rights will be breached."
7. Secondly, the First-tier Tribunal concluded that the appellant's deportation would be contrary to para 398 of the Immigration Rules (HC 395 as amended) on the basis that there were "exceptional circumstances" which outweighed the public interest. Finally, in respect of Art 8 of the ECHR the Tribunal concluded, particularly in the light of the Strasbourg Court's decision in Maslov v Austria [2009] INLR 47, that the appellant's deportation would be a disproportionate interference with the right to respect for his private life.
8. The Secretary of State sought permission to appeal the First-tier Tribunal's decision both in relation to its decision to allow the appeal under Article 3 and also under Article 8 of the ECHR. Permission was initially refused by the First-tier Tribunal on

28 October 2013 but, on 19 November 2013 the Upper Tribunal (UTJ McGeachy) granted the Secretary of State permission to appeal on the basis that the First-tier Tribunal had arguably erred in law in its assessment of the public interest under Art 8 and also in concluding that as a criminal deportee the appellant would be at risk of treatment contrary of Article 3 of the ECHR on return to the DRC.

9. The appeal came before me on 4 February 2014. At the outset, Mr Richards who represented the Secretary of State made an application to adjourn the hearing in order to await a country guidance case by the Upper Tribunal in respect of the risk to criminal deportees on return to the DRC. Mr Richards drew my attention to the Administrative Court's decision in R (on the application of P) v SSHD [2013] EWHC 3879 (Admin). At [54] Phillips J stated that:

"54. In my judgement there is a real and substantial risk that P, in common with other criminal deportees (who have served the sentence imposed on them for their crimes in this country), would be subjected to further imprisonment and ill-treatment if returned to the DRC."

10. At [55] Phillips J concluded as follows:

"55. I cannot bind the defendant in relation to other cases involving the deportation of convicted criminals to the DRC, but I should indicate my view, again expressed with regret, that, on the basis of the evidence I have seen, such persons have a strong claim for asylum and should not be deported to the DRC unless and until there is a clear basis for believing that the risk indicated above no longer arises generally or does not arise in a particular case."

11. Mr Richards indicated that his instructions were that the Secretary of State was seeking to appeal that decision and it was hoped that a country guidance case might result if the appeal to the Court of Appeal was compromised and the appellant then appealed to the First-tier Tribunal. On that basis, Mr Richards submitted that it would be appropriate to adjourn this appeal which raised precisely the point dealt with in P and to await the outcome of any country guidance case.
12. Mr Hodgetts opposed the Secretary of State's application. He submitted that it was inappropriate to adjourn this appeal to await any further country guidance, at least at the stage of determining whether the First-tier Tribunal had erred in law. He submitted that the decision in P fully supported the First-tier Tribunal's conclusion that this appellant's deportation would breach Article 3 of the ECHR.
13. At the conclusion of these submissions, I refused the Secretary of State's application for an adjournment. Although the Secretary of State is seeking to appeal the Administrative Court's decision in P and, as I understand it, has been granted permission to appeal, there does not appear to be any immediate prospect of any country guidance decision by the Upper Tribunal. Even if, as Mr Richards indicated, the Secretary of State accepts the quashing of the certification that the claimant's asylum claim in P was clearly unfounded, any appeal would necessarily have to progress through the First-tier Tribunal and, if appropriate, reach the Upper Tribunal before that case could result potentially in any country guidance. That

would necessarily take some time. Such a possibility (or indeed the speculative possibility of another country guidance decision) cannot justify adjourning this appeal.

14. For those reasons, at the hearing I concluded that it was not appropriate to adjourn the hearing to an unspecified date.
15. Having refused the Secretary of State's application for an adjournment, Mr Richards indicated that his instructions were to withdraw the Secretary of State's appeal to the Upper Tribunal. That is an application by the Secretary of State to withdraw its case within rule 17(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). By virtue of rule 17(2) such a withdrawal cannot take effect without the consent of the Upper Tribunal.
16. Mr Hodgetts did not raise any objection to the Secretary of State's application to withdraw her case. I see no basis upon which I could properly refuse consent to the Secretary of State withdrawing her appeal. No purpose can be served in continuing with this appeal if the First-Tier tribunal's decision to allow the appeal is no longer challenged by the Secretary of State. Consequently, I consent to the withdrawal of the Secretary of State's case (her appeal to the Upper Tribunal).
17. Consequently:
 - (a) The Secretary of State's appeal to the Upper Tribunal is withdrawn;
 - (b) the decision of the First-tier Tribunal to allow the appellant's appeal under Articles 3 and 8 of the ECHR and under the Immigration Rules stands.

Signed

A Grubb
Judge of the Upper Tribunal

Date: