



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

Appeal Number: PA/11119/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 16 November 2018**

**Decision & Reasons Promulgated
On 29 November 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VICTOR [H]

Respondent

Representation:

For the Appellant: Mr. D. Clarke, Home Office Presenting Officer

For the Respondent: Mr. A. Moran, Alex Moran Immigration and Asylum

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Venezuela. He initially applied for asylum with his father and his father's application was refused on 13 October 2017. His own application was refused on 16 October 2017.

2. They appealed and their appeals were listed before First-tier Tribunal Judge Sweet on 24 July 2018. He allowed the Appellant's appeal in a decision promulgated on 6 August 2018. The Secretary of State appealed against this decision and Resident Judge Appleyard granted him permission to appeal on 27 September 2018.

ERROR OF LAW HEARING

3. At the hearing the Home Office Presenting Officer stated that the Appellant was no longer relying on his second ground of appeal, which was misconceived. Both he and the Respondent's representative then made oral submissions which I have relied on when reaching my findings below.

ERROR OF LAW DECISION

4. Section 82(1) of the Nationality, Immigration and Asylum Act 2002 states that:
"A person ("P") may appeal to the Tribunal where-
(a) the Secretary of State has decided to refuse a protection claim made by P".
5. In paragraph 1 of his decision, First-tier Tribunal Judge Sweet noted that the Respondent's father's appeal had been "withdrawn" as he had moved to Canada. As a consequence, the Respondent's father's appeal was not before the First-tier Tribunal and his name should not have been mentioned in the heading of the decision. In addition, his appeal had not been "withdrawn" for the purposes of rule 17 of the Tribunal Procedures (Upper Tribunal) Rules 2008. More properly, it had been treated as "abandoned" for the purposes of Rules 17A(1)(a) because he had left the United Kingdom.
6. At paragraph 33 of his decision, First-tier Tribunal Judge Sweet listed a number of concerns which had been raised by the Secretary of State in relation to the credibility of the Respondent's account. But, in paragraph 34 of his decision he went on to find that, applying the requisite lower standard of proof and taking into account the objective and expert evidence, the Respondent would have a well-founded fear of persecution if removed to Venezuela.

7. The Respondent's representative relied on the fact that First-tier Tribunal Judge Sweet had heard oral evidence and given detailed consideration to all the evidence before him and that the findings which he reached were clearly open to him on that evidence and I find that this is the case. He also noted that there was no country guidance in relation to the current situation in Venezuela and, therefore, First-tier Tribunal Judge Sweet had to rely on the significant amount of objective evidence and the two expert reports provided to him. He noted the evidence which he had taken into account and made clear findings of fact in relation to it.
8. I have also taken into account the fact that, in paragraph 28 of his decision, the Appellant gave some weight to the document outlining the case against the Respondent for "inciting the people" as there was no way to verify its origin. He did not assert that it was not a genuine document and since then Mr. Gomez has confirmed, in paragraph 47 of his expert report, that an exaggerated use of stamps, official papers and formality is common in the Venezuelan judiciary and law enforcement agencies.
9. In his expert report, Dr. Rodriguez, a practicing trial attorney in Venezuela, stated that he studied records of a case that had come before the First Criminal Court of First Instance and which involved the Respondent. He relied on his 28 years of experience, as a criminal trial lawyer, when advising the Respondent that if he did attend court, he could not expect to receive a fair hearing.
10. I have also noted that in paragraph 30 of his decision First-tier Tribunal Judge Sweet accepted that the Respondent had been charged with conspiracy against the Government and public incitement and had been bailed to return to court on 8 January 2016. In paragraph 32 of his decision, he also found that there had been more than 11.000 detentions for political reasons in Venezuela between February 2014 and September 2017.
11. Mr. Gomez gave a detailed account of his expertise in the law of the Bolivarian Republic of Venezuela and had been provided with all relevant documents relating to the Respondent's application for asylum and his subsequent appeal. He did not comment on the content or form of the document being relied upon by the Respondent but it was his opinion that the account given by him up to and after being detained in Venezuela was plausible in the context of the current social, political and economic conditions there. In paragraphs 23 and 24 of his report, he also confirmed that there was a strict food distribution system in force in Venezuela, that

was managed by the military and that the account of mistreatment provided by the Respondent accorded with his own knowledge of the harassment and arrests being undertaken there. In paragraph 26 of his report he also noted that the Respondent's father's political affiliation would increase the risk that the Respondent would be subjected to an unfair trial and disproportionate incarceration.

12. It was not the case that the Appellant faced charges for his political activities but that he was at risk because of his imputed political opinion. In paragraph 39 of his expert report, Mr. Gomez also referred to there being evidence of the extreme politicization of the judiciary in Venezuela and its complete submission to the political establishment.
13. The Appellant noted a number of adverse credibility findings made by First-tier Tribunal Judge Sweet. However, a finding that little weight can be attached to the Respondent's father's political activities does not go directly to the Respondent's fear of persecution. His fear is based on evidence which suggests that once a person is suspected of some form of incitement against the state, no fair trial is possible.
14. The fact that other relatives have not had any issues with the authorities is also not determinative of whether the Respondent would be persecuted on return. It was not said that the authorities were looking for the Respondent or suspected that his relatives were hiding him. It was also not the Appellant's case that the Respondent's other family members were involved in inciting others against the authorities.
15. The Appellant doubted whether the Respondent would have been released on bail, if he was of such interest to the authorities, but in paragraph 48 of his expert, Mr. Gomez explained that in December 2015 it was plausible that he would have been released to appear at a further hearing as the authorities may have needed time to construct a formal case against him to give the appearance that due process was being followed.
16. For all of these reasons I find that the decision made by First-tier Tribunal Judge Sweet's decision does not contain any material errors of law and that it should not be set aside.

Decision

- (1) The appeal is dismissed.
- (2) The decision of First-tier Tribunal Judge Sweet stands.

Nadine Finch

Signed

Date 16 November 2018

Upper Tribunal Judge Finch