



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

Appeal Number: PA/08696/2017

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 16th April 2019**

**Determination Promulgated
On 23rd April 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**P
(anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Harvey, instructed by TRP Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as P. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. By a decision promulgated on 9th January 2018, First-tier Tribunal Judge Ford dismissed P's appeal against the decision of the respondent refusing his human rights claim on Article 3 grounds. Permission to appeal was granted.
2. Ms Harvey did not seek to pursue the nationality issue although she did take the view that the First-tier Tribunal was incorrect in refusing to deal with the issue given that it was not advanced before the First-tier Tribunal as a dispute as to nationality but rather as part of an Article 8 claim. Given the fundamental errors by the First-tier Tribunal judge in failing to address the grounds of appeal relied upon by the appellant and only dealing with the issue as an "Article 3 health case", and failing to consider Article 8 at all, I am satisfied, as conceded by Mr Mills, that the First-tier Tribunal judge erred in law such that the decision is set aside to be remade.
3. Pursuant to Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and by the consent of the parties the following order is made:
 - (i) Upon the determination by the First-Tier Tribunal disclosing a material error of law and being set aside on 16th April 2019.
 - (ii) And upon the parties agreeing that the evidence establishes that P would, if returned to South Africa, be at risk of a breach of his article 3 and 8 rights, the appeal against the refusal of his article 3 and 8 claim is allowed.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

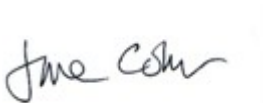
I re-make the decision in the appeal by allowing it.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 16th April 2019



Upper Tribunal Judge Coker