Upper Tribunal
(Immigration and Asylum Chamber) PA/01849/2018 (P)

THE IMMIGRATION ACTS

Decided, without a hearing, under rule 34

Decision & Reasons Promulgated

On 30 July 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A E W

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION and REASONS (P)

1. The appellant is a citizen of Grenada, now aged 43. On 18 January 2018, the SSHD found that he was not entitled to asylum or humanitarian protection and maintained her decision to deport him. He appealed to the

FtT. Judge Gaskell dismissed his appeal by a decision promulgated on 3 February 2020.

2. The appellant sought permission to appeal to the UT on 4 grounds, which in summary are as follows:

> (1) error in finding the appellant not entitled to humanitarian protection, because (i) there was no evidence that the individual (V) whom he feared was no longer alive or living in Grenada; (ii) Grenada is very small and has a population just over 100,000; and (iii) there was no consideration of evidence that Grenada does not have a military, and its police force is limited;
>
> (2) error in taking the appellant's daughter C to be an adult, when she was 14 at the date of the hearing, and just 15 at the date of decision;
>
> (3) incorrect approach to paragraph 398 of the rules – looking for very compelling circumstances over and above the exceptions, rather than aggregating all relevant matters; and
>
> (4) reaching no conclusion on very significant obstacles to integration into Grenada - the appellant's 25 years from age 17 in the UK, never having worked there, and having no family left there, were such circumstances.

3. By a decision dated 11 and issued on 13 March 2020 FtT Judge Holmes granted permission, in these terms: …

> It is arguable that the judge made a material error of fact as to the age of a child … all of the arguments in relation to article 8(2) may be pursued.
>
> If there was an error of approach to section 72 it was in the appellant's favour. Moreover the judge's comments about the lack of evidence concerning V's presence on the island, or his appetite for any form of revenge … given the passage of time were accurate Even if the appellant had been absent from the island since 1984, that was not the case in relation to his sister or his grandmother and there was no evidence of pursuit of revenge against either.

4. By a note and directions dated 3 and issued on 29 April I took the provisional view that it would be appropriate to determine without a hearing whether the making of the decision of the FtT involved the making of an error on a point of law and, if so, whether it should be set aside.

5. In a response dated 13 May 2020, the appellant submits that the FtT made a material error about the age of the child, such that its decision should be set aside; that there should be a hearing to decide those issues, by electronic means if necessary; and seeks "a full re-hearing before the FtT", with updating oral and written evidence on family matters.

6. In a response dated 15 May 2020, the SSHD concedes that the error on the age of C "materially affected the proportionality assessment via the application of the unduly harsh test and very compelling circumstances" and "does not object to that portion of the decision being set aside for remaking"; submits that there was no error on the protection claim; concedes material error in the decision on whether the exceptions to

deportation were established; and suggests retention of the case "within the UT for remaking in due course, limited to an assessment of s117C(4-6)".

7. There is no reply from the appellant on the file.

8. In all the circumstances, and in light of the concession by the SSHD, it is appropriate, consistently with rules 2 and 34, to decide on error of law, and on setting aside, without a hearing.

9. The grant of permission did not extend to the findings on protection. In any event, those grounds are only disagreement. The FtT's conclusions on protection disclose no legal error, and are preserved.

10. The FtT's error about the age of the child is so material to the article 8 outcome as to amount to error on a point of law. The FtT's conclusions in terms of paragraph 398 of the rules, and of proportionality, are set aside. (The error does not apparently have anything to do with "very significant obstacles to integration into Grenada"; but to avoid any unnecessary complication, that aspect of the article 8 consideration is not excluded from fresh consideration.)

11. There is a presumption in favour of the UT remaking the decision, as sought by the SSHD. However, although the remaking is limited, the extent of the new evidence which the appellant is likely to tender - see [4] of his submissions – and of the re-hearing is such that the course he seeks is preferable. Under s.12 of the 2002 Act and Practice Statement 7.2, the case is remitted to the FtT for a fresh hearing, limited as above.

12. The member(s) of the FtT chosen to consider the case are not to include Judge Gaskell.

13. The date of this decision is to be taken as the date it is issued to parties.

14. The FtT made an anonymity direction, which remains in place.

UT Judge Macleman Date: 20 July 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.