IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/32282/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 October 2014	**On 31 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

MR ARVIN APPADOO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Gibson-Lee, Counsel
For the Respondent: Mr S Kandola

DECISION AND REASONS

1. The appellant, born on 12 July 1976, is a citizen of Mauritius.

2. He appealed against a decision of the respondent made on 17 July 2013 to refuse to grant him further leave to remain in the United Kingdom and to remove him from the United Kingdom. That appeal was heard by Judge of

the First-tier Tribunal Cooper sitting at Taylor House who, in a determination promulgated on 10 June 2014, dismissed it.

3. On 5 September 2014 Judge of the First-tier Tribunal P J M Hollingworth gave reasons for allowing the appellant's application for permission to appeal. It state:

> "1. The application is out of time but is admitted as good reason has been shown. The application is granted. An arguable error of law has arisen in relation to the standard of proof in the context of Article 3."

Thus the appeal came before me today.

4. I mooted whether there was in fact anything for me to decide by reason of the application having been granted erroneously as the issue of standard of proof in the context of Article 3 had not been raised in the grounds.

5. Mr Gibson-Lee acknowledged the difficulty but asked me to look at the application in the context of the background to the appeal which included the appellant not being represented at the hearing before Judge Cooper. He drew my attention to the judge's comments at paragraph 8 of his determination in relation to the "regrettable, and indeed reprehensible" fact that the respondent had not included in her bundle all the documents referred to in the application. He addressed me on this giving rise to a potential procedural unfairness which he acknowledged had not been within the grounds seeking permission to appeal but ultimately he asked me to conclude that the judge's analysis of the appellant's Article 3 claim was flawed and in particular in relation to the adopted standard of proof. He emphasised that he only wished to rely on an error within the judge's Article 3 assessment.

6. Mr Kandola urged me to accept that there is no error made by Judge Cooper in coming to his conclusions in relation to Article 3. Even if there were it was not material as he had properly looked at the issues of both internal relocation (which had not been challenged) and sufficiency of protection. Nothing within the determination gave rise to a material error of law.

7. The first thing to say is that permission has been granted in respect of an arguable error of law in relation to the standard of proof in the context of Article 3. This ground is not pleaded in the grounds seeking permission to appeal. Therefore there is nothing before me.

8. The grounds seeking permission to appeal are "rambling" and make reference to the appellant's private life, Article 3, Article 8 and Section 47 of the Immigration, Asylum and Nationality Act 2006. They conclude by stating at paragraph 24:

> "24. It is submitted for the above-mentioned reasons that the FTTJ's determination is flawed both in respect of the evaluation of

evidence in respect of the failure to consider the private life of the appellant and decision against removal direction under Section 47 of the Immigration, Asylum and Nationality Act 2006."

9. Today the appellant's Counsel emphasised that he relied solely on the Article 3 issue. That is referred to at paragraph 9 of the grounds seeking permission to appeal. It states:

> "9. This finding is fundamentally wrong as the FTTJ has not considered appellant's (sic) case under Article 3 of the ECHR. The appellant evidently stated during the course of hearing that he was afraid to go back to Mauritius because he had an affair with a married woman in Mauritius for eight years and her husband had warned him and threatened him that he would kill him."

10. At paragraph 52 onward Judge Cooper dealt with the appellant's Article 3 claim. In so doing he has given cogent and sustainable reasons for coming to the conclusions that he did in relation thereto. There is no material error whatsoever in his analysis. The appellant's claim was inevitably doomed to failure.

11. There is here no material error of law.

12. The conclusions of the judge were open to be made in all the circumstances.

Notice of Decision

The making of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity direction is made.

Signed Date 30 October 2014.

Deputy Upper Tribunal Judge Appleyard