IAC-AH-SAR-V6

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01316/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd January 2016	**On 15th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[G P] (A MINOR)

Respondent

ANONYMITY ORDER

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue 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 original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Mr P Duffy (Home Office Presenting Officer)
For the Respondent: Ms P Chandran (Counsel)

DECISION AND REASONS

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1. The Claimant is a citizen of North Korea born on [ ] 2001. Consequently the Claimant is a minor. The Claimant claimed that her approximate arrival date in the UK was 20th August 2012. She claimed asylum on 30th August 2012 on the basis that she had a well-founded fear of persecution in North Korea on the basis of her religion namely that she is a Christian. That application was refused by the Secretary of State on 7th January 2015. The Claimant was however granted limited leave to enter until 6th July 2017.

2. The Claimant appealed and the appeal came before First-tier Tribunal Judge Andonian sitting at Taylor House on 15th May 2015. In a determination promulgated on 2nd June 2015 the Claimant's appeal was allowed and an anonymity direction was made.

3. On 9th June the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. The principal thrust of the Grounds of Appeal were that the Immigration Judge had materially erred in law by failing to follow the country guidance case of *GP and Others* (South Korean citizenship) North Korea CG [2014] UKUT 00391 (IAC).

4. On 19th June 2015 First-tier Tribunal Judge Grant-Hutchison granted permission to appeal considering that it was arguable that the judge had erred in law by failing to follow the country guidance case of *GP* and in allowing the appeal under Article 8, that the Claimant had been granted discretionary leave until July 2017 and the appeal was brought under Section 83 of the Nationality, Immigration and Asylum Act 2002.

5. On 3rd July 2015 the claimant's solicitors, through their Counsel, lodged a Rule 24 response. It was on that basis that the appeal came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal. I further noted at the time that neither the Claimant nor her foster mother appeared before the First-tier Tribunal nor appeared before me on the hearing of the error of law. I was quite content however to note that the Claimant was aware of the proceedings and excused her attendance, something that is maintained for today's hearing.

6. Country guidance is now provided by *GP and Others (South Korean citizenship) North Korea CG [2014] UKUT 00391 (IAC)*. Suppositions of the First-tier Tribunal Judge at paragraphs 6 and 7 are in conflict with the findings in *GP* in particular with regard to the grant of protection that would be provided. Whilst the First-tier Tribunal Judge cannot be criticised for not having made reference to *GP* he has in fact made no reference to any case law in particular the authority that was that extant at that time namely *KK and Others* (nationality: North Korea) Korea CG [2011] UKUT 92 (IAC*)*. *GP* is authority for saying that, with the exception of certain paragraphs, that country guidance still stands. However in such circumstances the failure to address *GP* created a material error of law.

7. I therefore set aside the decision but made certain findings and set them out:

(a) The findings of fact are to stand.

(b) The issues outstanding are legal issues namely:

(i) should a minor's case be distinguished from *GP*;

(ii) does the fact that the minor has been granted limited leave to remain affect the decision; and

(iii) the inherent complexity of the issues in this particular case and whether in these circumstances the overall question of the returnability of the Claimant to South Korea.

8. Both legal representatives asked me to give due consideration as to whether the matter should remain in the Upper Tribunal and I was satisfied that it should be rather than remitted to the First-tier Tribunal. The reason for this was that:–

(i) findings of fact were not challenged, i.e. the findings of fact stand;

(ii) the only outstanding issue was an issue of law best dealt with within the Upper Tribunal; and

(iii) the practical basis due to the fact that it was more likely with the current waiting lists that the appeal would be heard quicker in the current listing climate if reserved to myself in the Upper Tribunal rather than being remitted to the First-tier. I did however acknowledge that in one respect there was no great urgency to the hearing, bearing in mind that the Claimant has discretionary leave to remain until 2017 but I took the view that the case having a substantial history and for the benefit of all concerned, prompt resolution would be helpful.

9. I consequently gave directions for the rehearing of this matter. Leave was granted that the Claimant did not need to attend the restored hearing but the Claimant's instructed solicitors were granted leave to obtain an additional expert's report from Pillkyu Hwang limited to the issue surrounding the protection of young children in South Korea and the prospective risks that the Claimants could/would be exposed if returned. I gave leave to the Claimant's solicitors to file an up-to-date bundle of documentation and, that in the event that he was available, Dr Pillkyu Hwang attend court for the purpose of cross-examination on his addendum report.

10. It is on that basis that the appeal comes back before me. Fortunately the legal representatives who were present before me when I gave directions are again available to attend and the Claimant's instructed solicitors have fully complied with my directions. Ms Chandran refers me to the additional documents that she has produced. These consist of:–

- a skeleton argument;
- the addendum report of Dr Pillkyu Hwang; and

- a bundle of additional objective evidence.

The History

11. The facts of this case are not in dispute. The Claimant was born on [ ] 2001. She was separated from her mother in 2011 and arrived in the United Kingdom to seek asylum in 2012. She is aged just 14 and has been granted temporary discretionary leave until July 2017, when she will be rising 16.

12. The claimant is a minor and a vulnerable person and previously an anonymity direction has been made. She is a North Korean national whom the Secretary of State seeks to remove to South Korea, of which, as a matter of law, she is also a citizen.

13. The Claimant has expressed her views about not wishing to be removed or go to South Korea and her reasons why, including that she will not feel safe in South Korea; that she does not know anyone who has gone there and knows no-one there, that she fears discrimination and being treated badly for being from North Korea. The Claimant's previously expressed views have been if removed she feels that she would have the need to hide the fact that she is from North Korea but fears that she might disclose that she is from North Korea by accident. She has indicated that she can speak freely about North Korea whilst in the UK with her foster carer but that she would not be able to do so if removed to South Korea.

14. I also note that the Claimant has expressed her view about not wanting to give up her North Korean nationality and that her foster carer, for the course of the proceedings before the First-tier Tribunal, provided two witness statements dated 2nd December 2013 and 28th April 2015 wherein she explained the Claimant's anxieties and beliefs about being sent to South Korea. I note that the Claimant was diagnosed with PTSD by a clinical specialist from the London and South Maudsley NHS Trust Child and Adolescent Mental Health Service Department. Within her evidence before the First-tier Tribunal the Claimant's distress on arrival in the UK was noted, including the fact that when placed with her foster carer she wore the clothes she arrived in, including sleeping in them for over three weeks. She was 12 years old and had indicated that she "wanted to keep her clothes on as they had been bought by her mother as this was the last remaining memory she had of her mother".

15. The Claimant was thereafter assessed by an independent social worker, Rosaleen Brown. Miss Brown in her report of 15th March 2014, which was also before the First-tier Tribunal, reports on the significant amount of loss that the Claimant had already experienced in her life, the number of transitions she had had to comprehend and the ongoing reality that her life is in a state of limbo. The expert had found that the Claimant was "scared and confused and understandably unable to fully articulate how she would feel about an unknown set of procedures such as removal from the UK and repatriation". The report notes that the Claimant was very clear she did not wish to leave the UK.

Expert Evidence

16. She relies upon her mental health issues and on the written reports of the clinical specialist Gill Allen from the London and South Maudsley NHS Trust and the independent social worker's report of Rosaleen Brown. Those reports are not challenged by the Secretary of State. Consequently it is accepted that the Claimant has ongoing PTSD.

Gill Allen

17. Gill Allen notes the Appellant was referred to her by the Unaccompanied Minors Team of the Child and Adolescent Mental Health Service Department at Croydon. Following a course of therapeutic work Ms Allen diagnosed her with post-traumatic stress disorder and concluded she had been traumatised by her past. She considered if a decision was made to return the Appellant to South Korea this should be over time and she should be included in the decision making process.

Rosaleen Brown

18. Ms Brown relies on Dr Hwang's comment on the impact of detention on the Claimant and on children generally and considers that her further development is likely to be affected. In so doing, she is not giving her own opinion, but relying upon his report. She has emphasised that the Claimant has made it very clear she does not wish to leave the UK.

19. Ms Brown notes the significant amount of loss that the Claimant has already experienced in her life, the number of transitions she has had to comprehend and the ongoing reality that her life is in a state of limbo. Ms Brown records that the Claimant can no longer recall the names of her parents and sister or other extended family and that she is scared, confused and unable to fully articulate how she would feel about an unknown set of procedures such as removal from the UK and repatriation. She notes that the Claimant finds it increasingly difficult to recall her fluency in speaking the Korean language, that she struggles to understand her North Korean identity and feels that she would be stigmatised in South Korea.

Dr Pillkyu Hwang

20. The Claimant relies on the expert's report of Dr Pillkyu Hwang, who attended court to give evidence. He has produced two reports, both of which he adopts and confirms as his evidence-in-chief, these being his reports of 22nd November 2013 and his addendum report of 15th January 2016. Dr Hwang is an expert in the relationship between North and South Korea. He has previously given evidence in the country guidance authority of *GP and Others* (South Korean citizenship) North Korea CG [2014] UKUT 00391 (IAC). His credentials and evidence are set out at paragraphs 78 to 95. The report in the current case is of a generic nature based on instructions by the Claimant and her solicitors.

21. His report concludes with the view that South Korean nationality for North Korean escapees is in essence a political construction which inevitably involves "the protection procedure" with serious human rights violations that a Tribunal may find amount to a well-founded fear of persecution.

22. Dr Hwang states that children are no exception to the protection procedure and that what is even worse is that during the detention of protection and social integration process for several months, no regular schooling is provided and there are no legal guardians for these children. Most unaccompanied North Korean child escapees are to go either into group homes only for North Koreans with regular schooling or alternative schools only for North Koreans with dormitories. He considered that young North Korean escapees face very serious challenges such as gaps in their physical health and socio-economic status, psychological health issues such as post-traumatic stress disorder and bias against the North Korean escapees that are widely prevalent in schools and workplaces. Further he states that to date there have been no known incidents where a North Korean escapee unaccompanied child has been forcibly removed (by a third country where they have sought asylum) to South Korea if the child had never been to South Korea before and he believes that this case raises grave issues of the highest importance in terms of the Claimant's protection and wellbeing.

23. Dr Hwang made reference to the most recent evidence of the Korean Bar Association that applicants are demanded to write down every detail they remember about their lives in North Korea, whether they are public or private, whether they are family related or workplace/school related using a few volume of notebooks and that he had mentioned this within the first paragraph of his report.

24. Under cross-examination from Mr Duffy, Dr Hwang stated that there were separate facilities provided for North Koreans in detention and that there had been a number of surveys but that once somebody was in the process there was no right to cancel and the person would be kept in solitary confinement. After that they would be placed in a room with others and he gave evidence of an example of a Chinese lady who had been placed in solitary confinement for six months and emphasised that such confinement could also take place for children.

25. Mr Duffy pointed out that in the Claimant's case she had left North Korea when very young and had then gone to China. He enquired as to how could she be distinguished from a Chinese national of North Korean descent and what process would be followed by the authorities. Dr Hwang replied that in general a detained person would be asked to write down everything that they state and in response to questions twice and if there are any discrepancies in the two versions of events, then interrogation would take place. When asked as to how regularly people are sent back to China he responds that if someone is of Chinese origin they will be sent back but the problem does arise when the person interviewed denies that they are Chinese. Reference was made to a case where fishermen had been returned having strayed into South Korean seas. Dr Hwang responds that these fishermen were

interrogated and returned to North Korea but that is the only situation he knows of where such events have taken place.

26. Mr Duffy takes Dr Hwang to part 7 of his addendum report – that part dealing with the effect of the Claimant's leave to remain in the UK. He notes that at 7.1.1 Dr Hwang contends that it is highly likely that if the Claimant goes to South Korea her leave to remain in the UK would have an adverse effect on her eligibility for a government support package and that she would probably be excluded from it. When asked as to whether her legal status is defined he replies no, nor does the Protection and Settlement Act of South Korea distinguish between indefinite and limited leave granted to an Claimant in the UK.

27. Mr Duffy notes that Dr Hwang has stated at 7.1.2 that the Claimant's leave to remain in the UK would probably result in a more thorough or harsher "protection procedure" because her refugee application and legal stay permit implies she does not have the desire or intention to come to South Korea in the first place although he acknowledges that once she applies for "protection" to the South Korean's authorities and successfully goes through "the protection procedure" that there would not be any obstacle for her to be recognised as a South Korean national and to reside in South Korea. Mr Duffy enquires if Dr Hwang means that it would not be possible therefore for the Claimant to go through the protection procedure and he responds by stating that if the Claimant were voluntarily returned and applied for protection she would be accepted into the process. Mr Duffy enquires as to whether Dr Hwang has any knowledge of children not being sent back by other countries to South Korea and Dr Hwang indicates that he has no knowledge of this.

Secretary of State's submissions

28. For the Secretary of State Mr Duffy relied on the Notice of Refusal, pointing out that, applying *GP and Others* all those born on the Korean Peninsula have South Korean nationality. He submits there is insufficient evidence to show the Claimant would not be accepted into the protection programme and that return would not constitute a risk of serious harm. However he does accept that the Secretary of State has not completed his enquiries as to whether she would be so accepted and acknowledges that the Claimant is a child. The Secretary of State's position is that the burden of proving that the protection programme is not open to this claimant is upon her, with the assistance of her legal representatives.

29. He contends that the Claimant is not a refugee and looking at the guidance in *GP* and what was said in *KK* , she has not shown a real risk of persecution or serious harm in South Korea and is not outside the country of her nationality for Refugee Convention or humanitarian protection reasons. He asked me to dismiss the appeal.

Claimant's submissions

30. For the claimant, Ms Chandran reminds me of the claimant's status as an unaccompanied minor and a vulnerable person, with discretionary leave to remain in the United Kingdom until July 2017.

31. Ms Chandran submits that the issue for the Tribunal is whether the Claimant is entitled to asylum or humanitarian protection and reminds me that the date of assessment is based on a hypothetical removal to South Korea today, the date of the hearing.

32. Her principal submission is that the impact of removing the Claimant from the UK to South Korea would amount to "persecution" or "serious harm" on account of her past experiences, her vulnerabilities and the future conditions in South Korea that await her. Ms Chandran relies on her skeleton argument. She points out that the Claimant is of North Korean nationality and she wishes to retain that and that the protection procedure of South Korea embraces a wish to enter into that process which the Claimant does not seek to do.

33. Ms Chandran asserts that on removal to South Korea, if the Claimant were to enter into the protection procedure, she would be forced to denounce and rescind her North Korean nationality and that she would be forced to enter into the protection procedure and undergo the protection procedures including immediate detention for an average period of six months, no schooling during that time and the lack of any guardian. She submits that for someone in the Claimant's vulnerable state of mind, those events would amount to persecution or serious harm.

34. Ms Chandran asserts that South Korea chooses whom to accept as citizens, that in all cases people who have gone to South Korea have gone willingly and that in the Claimant's situation she would not be accepted by the South Koreans as she does not willingly wish to enter into the protection procedure. That is not consistent with the findings in *GP* that South Korean citizenship is in practice always granted. She points out that there has not been a case of an unaccompanied child being returned to South Korea and when looked at, the conditions that the Claimant would face on return, the impact is to reach, she submits, the threshold of persecution.

35. Ms Chandran submits that the Claimant's age, gender, health etc. must be taken into account and the individual facts of this case must be considered. She emphasises she is not making a general point but referring specifically to the facts of this case, reminding me that this was a young vulnerable child whose mother did not come back one day from the fields and that she was brought by a pastor to the UK from China. She submits that the Secretary of State has decided to remove the Claimant to South Korea without any evidence and that it is relevant that the Claimant has no papers and cannot prove her North Korean heritage. However, the claimant currently has discretionary leave and there are no rds.

36. Ms Chandran asserts that the Claimant left North Korea when she was 5 years old and that there is no reason to believe that the South Koreans would accept her return. Again, in the light of *GP,* that submission cannot succeed.

37. Ms Chandran emphasises the Claimant's vulnerability and that in fact at all times since she arrived in the UK she has been in a vulnerable state and that this is relevant to her position on return. Her case is that the Claimant has very little identity left

and that her North Korean identity is the only link the Claimant has with her mother and she submits that for her to be required to undergo the protection procedure would be harmful to her and would amount to persecution.

38. Ms Chandran submits that *GP* is distinguishable as it did not focus on the rights of asylum-seeking unaccompanied children and the impact of the protection procedure on such minors if they are to be removed involuntarily. She refers me to the recent United Nations International Covenant on Civil and Political Rights dated 3rd December 2015 paragraph 38, pointing out there is no exception for immigration detention of children and that Dr Hwang has said that children do suffer as adults. She asked me to accept Dr Hwang's evidence and that of the claimant's doctor and the independent social worker, that the psychological effect on the Claimant would be such that the threshold of serious harm is reached. Ms Chandran asserts that the objv evidence supports a finding that the claimant would be denied schooling, and that no legal guardianship would be available nor access to Counsel. Ms Chandran reminded me of the claimant's evidence that she did not know how the protection procedure worked. For all these reasons she asked me to allow the appeal.

The Law

39. The law is set out in:

(1) The judicial headnote in *KK and Others* (nationality: North Korea) Korea CG [2011] UKUT 92 (IAC), so far as relevant, is as follows:

> *"…2. Korea*
>
> *(a) The law and the constitution of South Korea (ROK) do not recognise North Korea (DPRK) as a separate State.*
> *(b) Under South Korean law, most nationals of North Korea are nationals of South Korea as well, because they acquire that nationality at birth by descent from a (North) Korean parent, and fall therefore within category (i) in 1(a) above.*
> *(c) South Korea will make rigorous enquiries to ensure that only those who are its nationals are recognised as such but the evidence does not show that it has a practice of refusing to recognise its nationals who genuinely seek to exercise the rights of South Korean nationals. ..."*

(2) The judicial headnote in *GP and Others* (South Korean citizenship) North Korea CG [2014] UKUT 00391 (IAC) is as follows:

> *"(1) The Upper Tribunal's country guidance in KK and others (Nationality: North Korea) Korea CG [2011] UKUT 92 (IAC) stands, with the exception of paragraphs 2(d) and 2(e) thereof. Paragraphs (2), (3) and (4) of this guidance replace that given in paragraphs 2(d) and 2(e) respectively of KK.*
> *(2) South Korean law makes limited provision for dual nationality under the Overseas Koreans Act and the Nationality Act (as amended).*
> *(3) All North Korean citizens are also citizens of South Korea. While absence from the Korean Peninsula for more than 10 years may entail fuller enquiries as to whether a person has acquired another nationality or right of*

residence before a travel document is issued, upon return to South Korea all persons from the Korean Peninsula are treated as returning South Korean citizens.

(4) *There is no evidence that North Koreans returned to South Korea are sent back to North Korea or anywhere else, even if they fail the 'protection' procedure, and however long they have been outside the Korean Peninsula.*

(5) *The process of returning North Koreans to South Korea is now set out in the United Kingdom-South Korea Readmission Agreement (the Readmission Agreement) entered into between the two countries on 10 December 2011. At present, the issue of emergency travel documents under the Readmission Agreement is confined to those for whom documents and/or fingerprint evidence establish that they are already known to South Korea as citizens, or who have registered as such with the South Korean Embassy in the United Kingdom.*

(6) *Applying MA (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 289, North Koreans outside the Korean Peninsula who object to return to South Korea must cooperate with the United Kingdom authorities in seeking to establish whether they can avail themselves of the protection of another country, in particular South Korea. Unless they can demonstrate that in all of the countries where they are entitled to citizenship they have a well-founded fear of persecution for a Refugee Convention reason, they are not refugees.*

(7) *If they are not refugees, it remains open to such persons to seek to establish individual factors creating a risk for them in South Korea which would engage the United Kingdom's international obligations under the EU Qualification Directive or the ECHR.*

(8) *There is no risk of refoulement of any North Korean to North Korea from South Korea, whether directly or via China. South Korea does not return anyone to North Korea at all and it does not return North Koreans to China. In a small number of cases, Chinese nationals have been returned to China. A small number of persons identified by the South Korean authorities as North Korean intelligence agents have been prosecuted in South Korea. There is no evidence that they were subsequently required to leave South Korea.*

(9) *Once the 'protection' procedure has been completed, North Korean migrants have the same rights as other South Korean citizens save that they are not required to perform military service for South Korea. They have access to resettlement assistance, including housing, training and financial assistance. Former North Koreans may have difficulty in adjusting to South Korea and there may be some discrimination in social integration, employment and housing, but not at a level which requires international protection."*

Discussion

40. I remind myself that as a North Korean and South Korean national the Claimant must show that she is outside 'the country of her nationality' as defined in the Refugee Convention and in the Qualification Directive (that is to say, both North Korea and South Korea) for a qualifying reason under the Convention or the Directive.

41. The factual matrix of the case is accepted. The Claimant is a minor and has an additional vulnerability, because there is clear medical evidence to show that she suffers from post-traumatic stress disorder. There are no removal directions in place. Having regard to the lack of evidence as to the location of the Claimant's family members in South Korea and the Claimant's age, the Secretary of State has concluded that there are not adequate reception arrangements available, and the claimant has been granted discretionary leave. That leave has been granted under the Home Office policy that no unaccompanied child will be removed from the United Kingdom unless the Secretary of State is satisfied that safe and adequate reception arrangements are available in the country of origin.

42. It is against that background that I am now asked by the Claimant through her legal representatives to upgrade the grant of discretionary leave valid until July 2017 to a grant of asylum or humanitarian protection. In this case, the key question is whether this claimant has discharged the burden upon her of showing that the impact of removing her from the United Kingdom to South Korea would amount to persecution or serious harm for her on account of her past experiences, her vulnerabilities and the future conditions in South Korea that await her.

43. I have had the benefit of consideration of Dr Hwang's reports and his oral testimony. Dr Hwang's evidence before me is good insofar as it addresses general principles. However, I am not persuaded that his evidence can assist me beyond that. In particular, I place no weight on the assertion that the claimant objects to renouncing her North Korean citizenship. I remind myself that the claimant has left North Korea and does not wish to return there or assert or rely upon her North Korean citizenship by so doing: if her appeal succeeds she proposes to live in the United Kingdom, not return to North Korea. At [33] in the *GP* decision, the expert evidence of Dr Hwang, who also gave evidence in the present appeal, was that no formal renunciation of North Korean citizenship is required by South Korea, although new South Koreans had to pledge allegiance to South Korea at the end of the protection procedure.

44. The general principles on North Korean cases are to be found in the country guidance set out above, in *KK and Others* and in *GP and others.* In particular, the Upper Tribunal found that all persons born on the Korean Peninsula are citizens of South Korea, even if born in North Korea, and will be treated as citizens of South Korea on return. If such persons cannot demonstrate a well-founded fear of persecution for a Refugee Convention reason in South Korea, then they are not refugees. Similar considerations apply to humanitarian protection.

45. The Upper Tribunal found that the protection procedure did not amount to persecution or serious harm and it did so on the basis of evidence similar to that given before me. It also found that reluctance to return to South Korea did not exempt a claimant from seeking to exercise return to South Korea as a country of nationality, and cooperating with the United Kingdom authorities in that process. I have not been shown any proper reason to depart from the Tribunal's guidance on this point.

46. The Claimant is a South Korean citizen by birth. There is no immediate intention to remove her to South Korea and she is not outside the country of her nationality (South Korea) for a Refugee Convention reason. The claimant has not discharged the burden of showing that she is entitled to refugee status in relation to return to South Korea.

47. At sub-paragraph (7) of its guidance in *GP,* the Upper Tribunal stated that:

> *(7) If they are not refugees, it remains open to such persons to seek to establish individual factors creating a risk for them in South Korea which would engage the United Kingdom's international obligations under the EU Qualification Directive or the ECHR.*

48. In this case, the factors advanced relate to the claimant's health problems and her status as an unaccompanied asylum seeking child. The Claimant has the benefit of limited leave to remain until 2017. Whilst her mental and physical health problems are noted, they do not come close to the gravity of the Article 3 ECHR standard required by *N v UK* (2008) 47 EHRR 39 or *GS (India), & Ors v The Secretary of State for the Home Department* [2015] EWCA Civ 40. The claimant cannot succeed under the ECHR.

49. For all the above reasons the Secretary of State's appeal succeeds. I set aside the First-tier Tribunal and substitute a decision dismissing the appeal on all grounds.

Notice of Decision

(1) The Claimant's appeal is dismissed on asylum grounds.

(2) The Claimant is not entitled to humanitarian protection.

(3) The Claimant's claim is dismissed on human rights grounds.

The Claimant has previously been granted anonymity in the appeal procedure. No application is made to vary that status and the previously made anonymity direction is maintained.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris