



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13526/2016

THE IMMIGRATION ACTS

Heard at Field House
On 26 January 2018

Decision & Reasons Promulgated
On 22 February 2018

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

I K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sesay of Duncan Lewis & Co Solicitors (Harrow Office)

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge Clarke in the First-tier Tribunal who although allowing the appeal of the appellant on Article 3 grounds upheld the section 72 certificate which had been made by the respondent and the grounds of challenge argue that the judge erred in that respect in that there was a lack of reasoning. On this basis permission was granted by Judge Plimmer. Even where the appellant and his representative as was admitted failed to engage with the section 72 issue it was incumbent on the Tribunal to provide adequate reasoning to support its

conclusions on the certificate and Judge Plimmer also pointed to the materiality of this in light of the finding of risk on return under Article 3.

2. The Rule 24 response which is endorsed and developed by Ms Fijiwala today argues that there was no challenge to the Article 3 decision that went against the Secretary of State but only the section 72 decision and it was clear that it was in issue but Article 3 only was pursued. I think this has been clarified rather by Ms Fijiwala on the basis that the judge was clearly aware of the existence of the certificate. There are several references to it in the decision and the letter which addressed the certificate issued of 15 November 2016 did not raise any rebuttal arguments in light of the reliance on Article 3 and Mr Sesay argues that this is essentially artificial and there was an independent duty on the judge to address the issue in dealing with the section 72 point and in that regard he relies on the decision in Mugwagwa [2011] the decision of the Upper Tribunal.
3. I see the force of what Ms Fijiwala says but I think that this is an issue which nevertheless needs to be addressed by a judge. Although the focus of the hearing clearly was on Article 3 there was the certificate and the judge dealt with it really almost as an afterthought at the end without providing any reasoning. It may be that it would not be very difficult for a judge to reason without it we simply do not know because argument was not made and it is accepted that was an oversight by the appellant's representatives but nevertheless I think in the interests of justice it is necessary for me to find that there was an error of law in this case on the basis of the lack of reasoning in respect of the section 72 certificate and the matter will be remitted with the findings of the judge otherwise preserved to be dealt with by another judge at Taylor House.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date: 19 February 2018

Upper Tribunal Judge Allen