



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11782/2017

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
On 23 May 2019

Decision & Reasons Promulgated
On 13 June 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**ANAA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Bayoumi, instructed by Qualified Legal Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.
2. The appellant is a citizen of Yemen who was born on 15 January 1992. He entered the United Kingdom on 19 November 2008 when he was granted indefinite leave to enter.

3. On 27 May 2016, he was convicted of a sexual assault on a female at the Cardiff Crown Court and sentenced on 12 August 2016 to three years' imprisonment.
4. On 2 September 2016, he was notified that he was liable to be deported as a foreign criminal. On 22 November 2016, representations were made on his behalf as to why he should not be deported. Those representations included a claim for asylum. Following a screening interview and asylum interview, on 19 June 2017 he was notified that the Secretary of State was minded to apply s.72 of the Nationality, Immigration and Asylum Act 2002 (the "NIA Act 2002") to the appellant on the basis that he had committed a particularly serious crime and constituted a danger to the community.
5. A deportation order was signed against the appellant on 28 October 2017. On 31 October 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. In addition, the Secretary of State certified the appellant's asylum claim under s.72 of the NIA Act 2002.
6. The appellant appealed to the First-tier Tribunal. In a determination sent on 1 February 2018, Judge Suffield-Thompson dismissed the appellant's appeal on all grounds. First, she upheld the judge's certification under s.72 on the basis that the appellant had not rebutted the presumption that he was a danger to the community. Secondly, she concluded that the appellant could not establish that he was entitled to humanitarian protection as the required risk under Art 15(c) of the Qualification Directive did not exist in areas of Yemen to which it would not be unduly harsh for him to return and live. Finally, the judge dismissed the appellant's appeal under Art 8 of the ECHR, concluding that it would not be disproportionate for him to return to Yemen. Although the judge also dismissed the appellant's appeal under Arts 2 and 3 of the ECHR, she made no specific findings in relation to them.
7. The appellant was granted permission to appeal to the Upper Tribunal by the First-tier Tribunal (Judge Hodgkinson) on 6 March 2018 on the basis that the judge had arguably failed properly to consider the appellant's claims under Arts 2, 3 and 8 of the ECHR.
8. At an initial hearing before the Upper Tribunal, UTJ Rintoul concluded that the First-tier Tribunal's decision had involved an error of law, in that the judge had failed properly to consider the appellant's claim under Arts 3 and 8 of the ECHR. As a consequence, he set aside the First-tier Tribunal's decision and adjourned the appeal for a resumed hearing in which the Upper Tribunal would remake the decisions in respect of Arts 3 and 8. That resumed hearing was listed before me on 23 May 2019.
9. At that hearing, Mr Howells, who represented the Secretary of State, conceded that the appellant was entitled to succeed under Art 3 of the ECHR. He made that concession on the basis of the Secretary of State's position in relation to the risk on return to Yemen set out in the *CPIN* Report for January 2019 at para 2.3.12 that the conditions in Yemen breached Art 15(b) of the Qualification Directive which Mr Howells acknowledged mirrored the requirements of Art 3 of the ECHR. In

addition, he accepted that the new bundle of evidence submitted for the hearing contained evidence relating to the financial position of relatives in the UK which, he accepted, demonstrated that they would not be able to provide necessary financial support to the appellant in Yemen. Mr Howells accepted, therefore, that on the basis of current circumstances in Yemen, the appellant's deportation would breach Art 3 and he invited me to allow the appeal on that basis. In addition, following some discussion, Mr Howells also accepted that I should allow the appeal under Art 8 on the basis that a breach of Art 8 was established for the very same reasons that he conceded the appellant succeeded under Art 3.

10. Mr Howells pointed out that the Secretary of State would now consider what period of leave to grant the appellant and that the Secretary of State's concession in these proceedings did not preclude deportation proceedings in the future should the position in Yemen change.
11. On behalf of the appellant, Ms Bayoumi indicated that she was content that the appeal should be allowed on this basis under Arts 3 and 8 of the ECHR.

Decision

12. Accordingly, the decision of the First-tier Tribunal having been set aside by UTJ Rintoul in his decision sent on 10 September 2018, I remake the decision allowing the appellant's appeal under Arts 3 and 8 of the ECHR.
13. The First-tier Tribunal's decision to dismiss the appellant's appeal on asylum and humanitarian protection grounds stands.

Signed



A Grubb
Judge of the Upper Tribunal

11 June 2019