



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Number: IA/06160/2021
PA/52300/2021; (UI-2021-001571)**

THE IMMIGRATION ACTS

**Heard at a Remote hearing
On the 10 June 2022**

**Decision & Reasons Promulgated
On the 18 July 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**T S
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadesham, Counsel instructed on behalf of the appellant

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Anonymity :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve a protection claim. and 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 his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Lodato) (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights claim in a decision promulgated on 6 December 2021.
2. The appellant is a citizen of Grenada. The basis of his claim was that he had a well-founded fear of persecution or serious harm if returned to his home country because he was at risk from associates of criminals who had murdered a family relative. The Article 8 claim was based on his relationship with this partner, a British Citizen.
3. The FtT Judge set out his factual findings at paragraphs [58] -[65] and accepted the factual basis of the appellant's claim, having given his reasons for doing so by reference to the evidence given by the appellant and his witnesses and in conjunction with documentary evidence advanced on the appellant's behalf. Notwithstanding those positive factual findings and reaching the conclusion that internal relocation was neither realistic or reasonable, the FtTJ dismissed the appeal on protection grounds on the basis that there would be sufficiency of protection.
4. The basis of the appellant's Article 8 claim related to his relationship with his British citizen partner. Whilst the FtTJ accepted that the appellant and his partner were in a genuine and subsisting relationship, the FtTJ concluded that the appellant's removal would be proportionate as the appellant could maintain a long-distance connection as they had previously and that he could make a successful application for entry clearance. The FtTJ therefore dismissed the appeal on both grounds in his decision promulgated on 6 December 2021.
5. The appellant appealed on two grounds; firstly that the FtTJ erred in his finding that there would be sufficiency of protection by failing to address all the relevant circumstances and undertaking a holistic assessment taking into account the jurisprudence in this area and secondly, in his approach to the Article 8 claim by assuming that an application for entry clearance to the United Kingdom would be successful.
6. Permission to appeal was granted by FtTJ Mulready in a decision written on 3 March 2022.
7. The hearing took place on 10 June 2022, by means of *Microsoft teams* following a request made to the Tribunal by Counsel for the appellant. There were no objections on behalf of the respondent and both parties agreed that all issues could be determined in a remote hearing.
8. Mr Jagadeshm of Counsel and Mr Diwnycz, the Senior Presenting Officer also attended by way of video link. I confirm that there were no issues regarding sound, and no substantial technical problems were encountered during the hearing, and I am satisfied that both the advocates were able to make their respective cases by the chosen means. Mr Jagadeshm,

Counsel on behalf of the appellant in his oral submissions relied upon his written grounds.

9. At the hearing and after hearing the oral submissions of Mr Jagadesham Mr Diwnycz on behalf of the respondent informed the Tribunal that he accepted that the appellant's grounds of challenge were made out and that the decision of the FtTJ involved the making of a material error on a point of law and that the decision as a consequence should be set aside.
10. It was accepted by the respondent that in relation to grounds 1 and 2, that the FtTJ erred in his assessment of the issue of sufficiency of protection and the Article 8 analysis. In the circumstances it is only necessary to set out briefly why that concession was made.
11. Both parties agree that the judge made material errors of law for the reasons set out in the grounds of challenge. In the light of the concession made on behalf of the respondent, and on the submissions as provided, I am satisfied that the errors are material as the issue of sufficiency of protection goes to the core of his claim based on protection grounds.
12. The FtTJ made a careful analysis of the factual claim and resolved many of the issues in favour of the appellant. As the grounds set out, there were a number of key factual findings made in favour of the appellant as set out at paragraphs [58]-[65] which included the overarching finding that the appellant was at risk of being violently targeted (at [64]) and that the FtTJ did not find that internal relocation would be "remotely realistic or reasonable".
13. The issue challenged in the grounds is the assessment of sufficiency of protection against that factual background and in the light of other evidence. The FtTJ concluded principally at [67] that there was sufficiency of protection available for the appellant.
14. In reaching that assessment the parties agree that the judge failed to take account of relevant considerations as set out in the grounds. They can be summarised as follows. The relevant findings made in relation to internal relocation was set out at [65] principally taking into account the small population, the size of the country and that the appellant had already attempted relocation but was discovered. Whilst the FtTJ made clear findings on this issue, those findings did not feature in his assessment of sufficiency of protection. Whilst it might be argued that having made those findings the FtTJ was aware of them, that does not adequately address those findings in the context of sufficiency of protection. They were findings that were relevant to the ability of the authorities to protect the appellant (see decision in Horvath where considerations of geographical location are identified as relevant factors in the holistic assessment). Nor was it considered in the context of those factual findings as to the lack of any internal relocation, whether the system of protection was reasonable or whether the authorities had the ability to protect the appellant.
15. The grounds also refer to the letter from the state authorities as summarised by the FtTJ at [39] and addressed by him at paragraph [67].

On first reading, the assessment made at [67] appears to accord with the contents of the letter. The FtTJ did set out that the statutory witness protection scheme was not available. However the practical problems the authorities had were also identified in the letter which included the size of the jurisdiction and in the nature of the population. I am persuaded that those identifiable issues were relevant to whether protection would be realistically available to the appellant and did not form part of the holistic assessment.

16. Other issues that the grounds identified relate to whether the authorities had provided sufficiency of protection in relation to the appellant's relative. The legal authorities refer to particular account being taken of past persecution to ensure that the correct question is posed as to whether there are good reasons to consider that the persecution or lack of sufficiency of protection would not be repeated (see *AW (sufficiency protection) Pakistan* [2011] UKUT 31 at headnote 3. Whilst it was not argued that the appellant had suffered the same type of persecution as the appellant's relative, it was necessary to consider whether the appellant would be targeted given the description of the risk at paragraph [61]. Threats had been made against the appellant for which the appellant was advised to leave the country. There appears to be a factual omission as to whether or not the FtTJ accepted that the appellant's relative had gone to court to complain about the lack of assistance and protection from the police and having made the report no action was taken against the person who then went on to fatally attack the appellant's relative. This was a relevant factual issue to determine as it was evidence which went towards the issue of whether in the case of this particular appellant and on the factual circumstances that there was in fact sufficiency of protection.
17. Ground 2 challenges the FtTJ's assessment of Article 8 set out at paragraphs [71]-[72] of his decision. The FtTJ accepted that the appellant's relationship with his British citizen partner was "genuine, heartfelt and subsisting" (at [71]) and accepted that she was in the advanced stage of pregnancy. The FtTJ also found that on the particular facts of the appeal that there was no realistic prospect of his partner moving to live with the appellant as it would entail leaving her daughter behind in the care of her parents. It is not necessary to provide any further factual background, but it is common ground that the local authority had been involved in the placement of her other child. The FtTJ found that it would be tantamount to asking her to choose between the appellant and her daughter. However at [72] the FtTJ described as "tipping the balance" in the respondent's favour that there was nothing to prevent a properly formulated application for entry clearance in accordance with the Immigration Rules in due course. He therefore found that whilst his removal would involve "hardship and upset" for the couple while they put in place the conditions necessary to make an application for entry clearance, it was proportionate.
18. However as set out in the grounds of challenge and as accepted by Mr Diwnycz the conclusion reached at [72] was based on an assumption that

an application for entry clearance would be successful. What is missing from that assessment was an analysis of whether in fact an application for entry clearance would be granted (see decision in *Younas (section 117B(6) (b):Chikwamba; Zambrano) Pakistan* [2020] UKUT 129 at paragraph [94]) and in the light of the respective position of the parties including that the British citizen partner was not in employment).

19. The conclusion reached that entry clearance was likely to be granted meant that the FtTJ did not consider any alternative factual scenarios. For example, that the appellant and his British citizen partner would be permanently separated taking account of his earlier finding that it would be unjustifiably harsh for the appellant's partner to live with him abroad in the particular circumstances that the FtTJ had found. The FtTJ did not address either whether this would be for a significant period of time and what the effect would be upon the appellant's partner in the light of her unusual factual circumstances. Whilst he referred to an earlier point in time where they had maintained a relationship, this was arguably in very different circumstances as at the time of the hearing. These were relevant considerations in any proportionality assessment. As set out in the decision of *R (on the application of Chen) v SSHD (Appendix FM-Chikwamba-temporary separation-proportionality)* IJR [2015] UKUT 00189, there may be cases where temporary separation to enable an individual to make an entry clearance application may be disproportionate.
20. Furthermore in addressing the factual circumstances of the separation of the parties and the overall proportionality assessment the FtTJ did not address what would be the outcome for the appellant's partner in the light of the social services involvement in relation to her earlier child (see paragraphs 21 and 36) and that she was about to give birth imminently and the circumstances surrounding the birth itself. The FtTJ did not consider those factors when considering whether it be proportionate for the appellant to be removed to make an application for entry clearance which would mean that he would not be available to provide support and assistance for his partner and as planned by the local authority.
21. A further omission identified and set out in the grounds at paragraph (c) concerns the length of time that the appellant would be separated from his partner. The length and degree of family disruption was also a relevant factor to the question of whether any temporary removal would be disproportionate.
22. Ground (b) also makes reference to the earlier findings made at paragraph [61] where the judge found that the appellant would be at risk of being violently targeted in his home country and that relocation would not be "remotely realistic or reasonable". Thus the risks of applying for entry clearance abroad and the situation as described above was also a relevant factor in assessing proportionality.
23. In the light of the particular circumstances of this appeal, those were relevant omissions in the overall assessment of Article 8 and thus the

assessment of proportionality was flawed for the reasons set out in the grounds and explained above.

24. The parties therefore agree that the decision should be set aside. As to the issue of remaking the appeal, I am further satisfied that the appeal falls within paragraph 7.2 (b) of the practice statement. It will be for the tribunal to undertake a fresh assessment of the Article 8 claim. The circumstances of the parties have changed since the last hearing and further evidence is required as to the parties current circumstances. It will be necessary for the parties to give further evidence for the Article 8 assessment and refer the fact-finding and analysis to be undertaken. Similarly the issue of sufficiency of protection will require further factual analysis and also whether there is a Convention reason, which was not a matter that the FtTJ addressed.
25. I therefore remit the appeal to the First-tier Tribunal for that hearing to take place. I preserve findings of fact made by the FtTJ as set out at paragraphs [58]-[65] which relate to the factual findings made concerning events in the appellant's home country, including internal relocation. There is also no dispute that the appellant and his partner was found by the FtTJ to have a genuine and subsisting relationship at the time of the hearing.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside.

The appeal is remitted to the First-tier Tribunal for a hearing with those preserved findings as set out above.

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Signed Upper Tribunal Judge Reeds

Dated : 14 June 2022