



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001735

PA/00211/2021

THE IMMIGRATION ACTS

**Decided on the Papers
Pursuant to Rule 34
On the 15th November 2022**

**Decision & Reasons Promulgated
On the 28 November 2022**

Before

**UPPER TRIBUNAL JUDGE KEITH
UPPER TRIBUNAL JUDGE BLUNDELL**

Between

**'NCH' (JAMAICA)
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision in respect of the appellant's appeal is made on the papers pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The context in doing so is set out in the background below.

Background

2. On 24th November 2021, the appellant appealed the decision of Judge Scott, promulgated on 28th October 2021, in which she dismissed the appellant's appeal on asylum, humanitarian and human rights grounds. FtT Judge Cox granted permission on all grounds on 23rd December 2021.

3. In her rule 24 response, the respondent accepts that the FtT materially erred in concluding that the appellant's article 8 claim amounted to a 'new matter' requiring the respondent's consent, such that the FtT did not have jurisdiction to hear that claim (paragraph [27] of the decision).
4. The parties have agreed that the appeal should be remitted to the First-tier Tribunal, other than Judge Scott, to consider and decide the appellant's article 8 appeal afresh. The parties further agree that there has been no challenge to Judge Scott's findings in relation to section 72 of the Nationality, Immigration and Asylum Act 2002 and exclusion from humanitarian protection; and the appellant's article 3 claim. They also agree that Judge Scott's findings at paragraphs [56] to [58], [64] and [69] should be preserved. Finally, they have agreed that there should be an opportunity to adduce updated evidence on the remaining article 8 appeal.
5. Pursuant to Rule 34, we have taken into account the views expressed by both parties that a hearing is unnecessary, before making a decision. In light of their agreement on that issue, and their agreement on the scope of remission to the FtT, we are satisfied that it is appropriate to determine this appeal without a hearing. We therefore proceed to consider and determine this appeal on the papers, by allowing the appellant's appeal.

Notice of Decision

Judge Scott's decision promulgated on 28th October 2022 contains errors of law in relation to article 8 ECHR. We set aside her decision in respect of article 8. Her decisions in respect of the protection and article 3 claims are undisturbed.

We remit the appellant's appeal on article 8 grounds to the First-tier Tribunal for a rehearing, subject to the preserved findings at paragraphs [56] to [58], [64] and [69] of Judge Scott's decision.

The remitted appeal shall not be heard by Judge Scott.

The anonymity directions continue to apply.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **15th November 2022**