



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

Appeal Number: PA/07245/2017

THE IMMIGRATION ACTS

Heard at Field House

On 30 April 2019

**Decision & Reasons
Promulgated
On 15 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**MRDS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. G. Loughran, Counsel instructed by Wilson Solicitors LLP

For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Pacey, promulgated on 2 March 2018, in which she refused the Appellant's appeal against the Respondent's decision to refuse leave to

remain on asylum and human rights grounds, and to deport the Appellant from the United Kingdom.

2. As this is an asylum appeal, I make an anonymity direction.
3. Permission to appeal was granted as follows:

“It is arguable that the First-tier Tribunal failed to consider the Appellant’s arguments set out at paragraphs 3.9 to 3.20 that he had rebutted the presumption that he was a danger to the community. The First-tier Tribunal Judge concludes at paragraph 22 of the decision that the presumption is made out without addressing the Appellant’s arguments or evidence and dismisses the appeal. It is also arguable that the First-tier Tribunal Judge, having found that the presumption applied, failed to consider Articles 2 and 3 ECHR”.

4. At the outset of the hearing Mr. Bramble accepted that the decision involved the making of material errors of law given the Judge’s failure to engage with the Appellant’s evidence regarding the rebuttal of the presumption under section 72, and her failure to engage with the Appellant’s claim under Articles 2 and 3 ECHR.
5. I stated at the hearing that the decision involved the making of material errors of law. I set the decision aside and remitted it to the First-tier Tribunal.

Error of Law

6. At [16] the Judge states that she is turning to consider whether “72(9)(b) and (2)” of the 2002 Act are applicable. She then sets out parts of section 72. At [22] she finds as follows:

“In this case the Appellant was convicted of an offence in the UK and was sentenced to a period of imprisonment of ten years. The presumption in ss.2 therefore applies and I accordingly dismiss the appeal”.

7. The Judge gives no consideration as to whether the Appellant has rebutted the presumption set out in sub-section (2). She fails to deal with this at all. She states that the presumption applies and accordingly dismisses the appeal, but she has failed to consider any of the Appellant’s arguments as to why that presumption should be rebutted. It appears from the fact that she has set out subsection 72 that she is aware that the presumption is rebuttable, but she has failed to address the Appellant’s evidence on this point. This is a material error of law.
8. She then states at [23]:

“For the sake of completeness I would add that on the specific claims put forward by the Appellant I would in any case dismiss the appeal”.

9. The Judge has not considered the Appellant's claim at all. Even if an appellant does not rebut the presumption under section 72, and therefore his asylum appeal cannot succeed, there remains his appeal under Articles 2 and 3 ECHR. The Judge says merely that she would "in any case" dismiss his appeal but makes no findings as to his claim, and gives no reasons for why she would dismiss it. She has failed to consider the evidence at all. I find that this is a material error of law.
10. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. The Judge has made no findings, and has failed to address the core of the Appellant's appeal. Therefore, given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

11. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside.
12. The appeal is remitted to the First-tier Tribunal to be reheard. The venue is to be confirmed following compliance with the direction below.
13. The appeal is not to be listed before Judge Pacey.

Direction

1. The Appellant has moved to London, and his partner needs to attend as a witness. The previous hearing was in Nottingham, but it is not clear that this is now the appropriate venue. The Appellant's representatives are directed to inform the Tribunal which hearing centre would be most appropriate for the rehearing of the Appellant's appeal.

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 his 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 14 May 2019

Deputy Upper Tribunal Judge Chamberlain