



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/20904/2018

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE FINCH

Between

TDS

(ANONYMITY ORDER MADE)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

UPON the resumed hearing being listed before the Upper Tribunal on 19 March 2020 being vacated

AND UPON further directions having been made on 16 March 2020

AND UPON the Upper Tribunal having consented to the Secretary of State for the Home Department withdrawing her case pursuant to Rule 17(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008

AND UPON the Upper Tribunal proposing to settle any outstanding issues by way of written submissions in the light of the restrictions imposed in response to the COVID-19 pandemic

AND UPON the Upper Tribunal having taken into account the contents of the Appellant's replacement skeleton argument, sent on 4 March 2020, the Supplementary Bundle sent on 5 March 2020, the further skeleton argument sent on 14 April 2020 and the further Bundle sent on 15 April 2020

AND UPON the Upper Tribunal taking into account the Response Skeleton Argument, filed on behalf of the Respondent on 24 April 2020, and upon the Upper Tribunal having extended time for this skeleton argument to be filed on account of the current Pandemic

AND UPON the Upper Tribunal taking into account the contents of the Appellant's Reply but noting that he tried to cast doubt on the Home Office Presenting Officer's integrity which was a point not previously taken and when the Home Office Presenting Officer had very properly at a previous hearing withdraw an erroneous assertion about an interview conducted with the Appellant

AND UPON the Upper Tribunal also taking into account the content of the emails which have been exchanged relating to the latter part of this appeal

AND UPON the appeal which was before the Upper Tribunal being an appeal under section 84(2) of the Nationality, Immigration and Asylum Act 2002 against the decision by the Respondent to refuse the Appellant's human rights claim following the decision by the Respondent to deport him to Jamaica

AND UPON the Upper Tribunal's jurisdiction being limited to consideration of his human rights appeal

AND UPON the Upper Tribunal having no powers to make an order for restitution relating to the fact that the Appellant's mother and brother had previously been granted discretionary leave to remain in 2014, which would lead to him having his discretionary leave to remain backdated to 29 December 2014

AND UPON the Appellant seeking what amounts to a wasted costs order against the Respondent on an indemnity basis

AND UPON both parties have proceeded on the basis that the Appellant was a Jamaican citizen for much of the case and the issue of whether or not the Appellant is stateless or able to seek Jamaican citizenship being unresolved between the parties

AND UPON the evidence not establishing that the Respondent acted in a manner which was improper, unreasonable or negligent

AND UPON paragraphs 47 and 48 of Mahmood, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Another [2020] EWCA Civ 71 and Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT UKUT 128 not being of relevance to the issues and remedies now under consideration

IT IS ORDERED THAT:

- 1. The Appellant's appeal is dismissed on the basis that the Respondent has withdrawn her decision to deport the Appellant to Jamaica and is proposing to grant him a period of discretionary leave and, therefore, no breach of his ECHR rights arises.**
- 2. There be no wasted costs order made against the Respondent.**
- 3. Even if there had been a basis upon which to make a wasted costs order, which we have decided that there is not, costs would not have been awarded on an indemnity basis as the Appellant failed to establish that the Respondent's conduct was improper, unreasonable or negligent. Any redaction of the GCID's minutes was not capable of obscuring the facts and history of the Appellant's case. In addition, the fact that the Appellant had not previously been issued with an ETD was not determinative of the issue of the Appellant's nationality as was made clear by the expert report and the failure on the part of the Appellant to apply to register as a Jamaican citizen.**

Nadine Finch

Signed

Upper Tribunal Judge Finch

David Allen

Date 1 July 2020

Upper Tribunal Judge Allen

