Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08882/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 23 April 2019	**On 29 April 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DA
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Sellwood, instructed by Duncan Lewis &Co, solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant, as they appeared respectively before the First-tier Tribunal. The appellant was born in 1980 and is a citizen of Trinidad and Tobago. He appealed to the First-tier Tribunal against the decision of the Secretary of State dated 11 August 2016 to refuses protection and human rights claims following a decision to deport him. The First-tier Tribunal, in a decision promulgated on 17 October 2018, allowed the appeal on human rights grounds (Article 3 ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The challenge to the Tribunal's decision is on a relatively narrow ground. Having rejected the other grounds of appeal, the judge concluded that there was a real risk that the appellant would be exposed to conditions in prison in Trinidad and Tobago which would breach Article 3 ECHR.

3. Mr Tan, who appeared for the Secretary of State, submitted that the judge's analysis was inconsistent in that the judge had believed part of the account of the appellant but rejected other aspects of that account as incredible. He accepted, however, as the grounds make clear [3], that the Secretary of State did not dispute that there are outstanding charges against the appellant in Trinidad and Tobago and that the appellant had previously been convicted of receiving stolen goods in that country and sentenced to 36 months' hard labour. Mr Tan did not press the argument advanced in the grounds at [3] that it was uncertain that the outstanding charges against the appellant would be serious enough to warrant his detention upon return. He acknowledged that the charges are serious. I find that he was right to do so and that it was clearly open to the judge to conclude that the appellant would be arrested upon return.

4. The grounds challenge the judge's reliance upon the expert report of Dr Wardle. Mr Tan submitted that the expert, an anthropologist, does not have the qualifications to comment authoritatively on prison conditions in Trinidad and Tobago. However, I agree with Mr Sellwood, who appeared for the appellant, and who submitted that the expert has based his opinion upon properly-cited sources including the US State Department report of 2015. As the judge noted [77], Dr Wardle was careful not to 'measure the evidence against any legal test' but only to offer his opinion that there was sufficient evidence available in the publicly-available material to support the proposition that prison and detention facilities would breach Article 3 ECHR. I find that the judge was well-aware of the limited nature of the opinion offered by the expert and that determining whether the prison conditions breached Article 3 ECHR was a matter for the Tribunal, not the expert. I note that the expert's assertion that around 30% of the prison population is comprised of pre-trial detainees and prisoners on remand and that there were severe delays waiting for trial dates was not challenged at the First-tier Tribunal hearing.

5. The grounds [4] highlight the expert's statement that 'some' of the prisons in Trinidad and Tobago suffer from severe overcrowding, infestation, violence, poor nourishment and a lack of ability to communicate with the outside world. It is submitted that the judge failed to determine whether conditions in all prisons would breach Article 3 ECHR and why it was likely that the appellant would find himself necessarily in one of the prisons with particularly poor conditions. This ground has no merit. The judge was concerned with determining the extent of risk by reference to the standard of reasonable likelihood. The appellant had been in one of the 'bad' prisons previously and a substantial proportion of the prisons have been shown by the background material to contain conditions which would cross the Article 3 ECHR threshold. The judge has carried out careful and detailed analysis and it was plainly open to him to conclude that it was

reasonably likely that the appellant would not only be detained upon his return but that he would find himself in a prison where his rights under Article 3 ECHR would be infringed. In essence, the Secretary of State's challenge is nothing more than a disagreement with that finding. As to the authority that overcrowding in prison can *per se* breach Article 3 ECHR, see *Mursic v Croatia* 7334/13 GC.

6. In the circumstances, the Secretary of State's appeal is dismissed.

Notice of Decision

7. This appeal is dismissed.

Signed Date 23 APRIL 2019

Upper Tribunal Judge Lane

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.