



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

Appeal Number: DA/02015/2013

THE IMMIGRATION ACTS

Heard at : Field House

Determination

On : 14 July 2014

Promulgated

On 08th Aug 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SAMUEL PRATT

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not Represented

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following a grant of permission to appeal on 29 May 2014.

2. The appellant is a citizen of Sierra Leone, born on 14 April 1973. He arrived in the United Kingdom on 1 May 1994 and claimed asylum on entry. His claim was refused and he was refused leave to enter. His appeal against that

decision was unsuccessful. Between 1996 and 1997 he was listed as an absconder. On 25 September 1997 he made a new asylum claim. That claim, together with a further application for leave to remain, was refused on 4 September 2000, but the appellant was granted exceptional leave to remain until 4 September 2004. His appeal against the refusal of his asylum claim was dismissed.

3. On 7 April 2004 the appellant was convicted at Cambridge Crown Court of wounding with intent to do grievous bodily harm and was sentenced to four years' imprisonment. On 7 February 2005 he was issued with notice of liability to deportation and he responded by reasserting his fear of return to Sierra Leone, which was considered as a further asylum claim. Another notice of liability to deportation was issued in November 2005 and further submissions were made on the appellant's behalf. He was advised that his asylum claim was in a backlog of cases and in March 2013 he was advised that his case was with the Case Assurance and Audit Unit (CAAU) of the Home Office. He was served with further notices of liability to deportation on 29 April 2013 and 4 September 2013, the latter inviting him to seek to rebut the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002.

4. On 9 September 2013 the appellant's solicitors advised the respondent that he had nothing to add to his asylum claim and that, given that his conviction was as long ago as April 2004 and that he had not re-offended since his release from prison in 2005 and since completing his licence in 2007, the presumption under section 72 was rebutted.

5. On 17 September 2013 the respondent made a decision to make a deportation order by virtue of section 3(5)(a) of the Immigration Act 1971. The appellant's asylum application was refused for reasons set out in a letter dated 12 September 2013. In that letter, the respondent concluded that the appellant had failed to rebut the presumption that his continued presence in the UK would constitute a danger to the community and that his crime was serious. It was considered that section 72 of the 2002 was therefore applicable to him. His asylum claim was accordingly refused on the grounds that the Refugee Convention did not prevent his removal from the United Kingdom. The respondent referred to the determinations of two previous Tribunals dismissing the appellant's asylum appeals, together with the subsequent submissions made on his behalf, and concluded that he would be at no risk on return to Sierra Leone and that his removal would not breach his human rights.

6. The appellant appealed against that decision. His appeal was heard before the First-tier Tribunal, by a panel consisting of First-tier Tribunal Judge Kelsey and Mrs A J F Cross de Chavannes. The appellant maintained before the Tribunal that he was at risk on return to Sierra Leone. He did not accept that he continued to constitute a danger to the community and he claimed that deportation would interfere with his established private life and breach his Article 8 human rights, given his length of residence in the UK and the respondent's delay in considering his claim. The panel did not accept that the appellant would be at risk on return to Sierra Leone and considered that he had not put forward a truthful account. They found that he had failed to rebut the

presumption under section 72 of the 2002 Act and they concluded that his deportation would not breach Article 8 of the ECHR.

7. Permission to appeal to the Upper Tribunal was sought by the appellant in person on general grounds disagreeing with the Tribunal's decision.

8. Permission to appeal was granted on 29 May 2014 on the grounds that the Tribunal had arguably misdirected itself in law in regard to the provisions under which the deportation order was made and the section 72 certification and had failed to consider the relevant immigration rules.

Appeal hearing

9. The appeal came before me on 14 July 2014. The appellant appeared in person without a representative. I gave him an opportunity to raise any concerns he had about the Tribunal's decision. He said that he had been made effectively stateless as he had been in a state of uncertainty for eight years awaiting a decision from the Home Office. He had told the Home Office that his paperwork had been interfered with whilst he was in prison. He had been in the United Kingdom for 20 years. Everyone had colluded against him. He had no ties to Sierra Leone.

10. Mr Avery submitted that whilst there appeared to have been some confusion on the part of the Tribunal as to the provision under which the deportation order was made, there was no material error as the panel had looked at all relevant issues. The section 72 certificate was not relevant since the appellant was found not to be at risk on return to Sierra Leone. There was a lack of any compelling reasons for the appellant to be in the UK and the outcome of the appeal was inevitable.

11. The appellant, in response, advised me that he wished to appeal against his conviction and asked me to grant permission to apply for judicial review. I informed him that those were not matters within my jurisdiction.

Consideration and findings.

12. In my view the Tribunal did not make any errors of law such that its decision needs to be set aside.

13. Permission was granted on the basis that the Tribunal had misdirected itself in law in regard to the provisions under which the deportation order was made. However, whilst the panel referred at paragraph 14 to section 32(5) of the UK Borders Act 2007, they correctly identified at paragraph 1 of their determination that the deportation order was made under the provisions of the 1971 Act. In any event it is clear that the issues before them were the same and essentially concerned the exceptions to deportation under paragraph 397 of the immigration rules, namely whether removal would be contrary to the UK's obligations under the Refugee Convention or the Human Rights Convention.

14. With regard to the section 72 certificate, it is the case that the panel dealt with the matter in a cursory fashion, with arguably limited reasons in regard to the presumption in section 72(2). However I would agree with Mr Avery that any error on their part in that regard is not a material one, given their conclusion that the appellant would not in any event be at risk on return to Sierra Leone and thus did not require protection under the Refugee Convention. That conclusion was one that was open to them on the evidence before them and was supported by cogently reasoned findings at paragraphs 20 to 22, in which they properly took account of the decisions in the appellant's previous appeals and noted the lack of supporting evidence.

15. With regard to Article 8, the panel noted at paragraph 12 the submission that the appellant had to demonstrate "exceptional circumstances" in order for the public interest in deportation to be outweighed, pursuant to paragraph 398 of the immigration rules. At paragraphs 19, 20, 23 and 24 they referred to an absence of evidence of family or meaningful private life in the United Kingdom. Although their determination may well have benefitted from clearer and more detailed findings, the panel nevertheless took account of all the evidence and reached a conclusion that was open to them on the evidence before them. The delay by the respondent in making the deportation decision was not one that ultimately could have affected the outcome of the appeal and, as Mr Avery submitted, the outcome was inevitable.

16. Taken as a whole, therefore, the determination contains adequately reasoned findings and conclusions which were open to the panel on the evidence before them. Neither the grounds of appeal nor the grant of permission disclose any material errors of law in their decision.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law, such that the decision has to be set aside. I do not set aside the decision. The decision to dismiss the appellant's deportation appeal therefore stands.

Signed 

Upper Tribunal Judge Kebede