



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004026

First-tier Tribunal No: PA/56151/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of March 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**RTN
(ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Karnik of Counsel, instructed by Kingsbridge Solicitors
For the Respondent: Ms S Simbi, Senior Home Office Presenting Officer

Heard remotely at Field House on 20 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. For the avoidance of confusion, the parties are referred to herein as they were before the First-tier Tribunal.
2. By the decision of the First-tier Tribunal (Judge Athwal) dated 12.1.23, the respondent has been granted permission to appeal to the Upper Tribunal against

the decision of the First-tier Tribunal (Judge Malik) promulgated 19.12.22 allowing the appellant's appeal against the respondent's decision of 17.12.21 to refuse his human rights claim following the cessation of his refugee status on 18.8.20 and the making of a deportation order on 14.12.21, which in turn followed from his 2017 conviction and sentence to two years' imprisonment for handling stolen goods.

3. The appellant had arrived in the UK in 2007 at the age of 12 to join his father, pursuant to the refugee family reunion provisions.
4. Following the helpful submissions of both legal representatives, I reserved my decision to be provided in writing, which I now do.
5. In addition to the documentation before the Upper Tribunal and the oral submissions, I have read and taken into account the appellant's Rule 24 reply, dated 24.11.23.
6. In essence, at [10] of the decision, Judge Malik found that the appellant, a national of the Democratic Republic of the Congo (DRC), had rebutted the presumption that he is a danger to the community. I note in passing that Judge Malik inadvertently stated the negative, that he had rebutted the presumption that he is *not* a danger, but the sense of what was intended is clear. The judge subsequently went on to find that the appellant had also discharged the burden of proving that he had a well-founded fear of persecution.
7. In summary, the grounds assert that the judge failed to provide adequate reasons for find that the appellant had rebutted the s72 presumption and failed to apply the correct standard of proof when considering the appellant's protection claim.
8. In granting permission, Judge Athwal considered it arguable that "the judge failed properly (to) explain how in the absence of independent evidence, (s)he was satisfied that the appellant was rehabilitated and no longer remained a risk to the public". Judge Athwal also considered the other ground arguable but provided no reasoning for that assessment.
9. As stated above, the reasoning for finding the s72 presumption rebutted is provided at [10] of the First-tier Tribunal decision. There, the judge accepts that the appellant has been convicted of a serious offence. The only evidence relied on by the appellant are subjective letters in support; there is no objective evidence whatsoever (although the judge refers to "independent subjective evidence"). It appears that what persuaded the judge was that the index offence dates to 2017 and there was no evidence that he had offended since, "*which suggests he has rehabilitated such that he no longer remains a risk. Therefore, I find he has rebutted the presumption*".
10. The Rule 24 Reply argues that the grounds fail to establish that the decision of the First-tier Tribunal was 'plainly wrong' as per Volpi v Volpi [2022] EWCA Civ 464. It is also submitted that the grounds are misconceived given that there was 'objective evidence' before the First-tier Tribunal as to the factual the circumstances of the case, including the nine years since the commission of the offence in 2014 and the appellant's young age at that time. It is further submitted that there is no authority to support the respondent's proposition that the s72 presumption cannot be rebutted in the absence of objective or independent evidence.
11. The appellant also challenges the respondent's second ground in relation to cessation of refugee protection, arguing that the burden is on the respondent not the appellant to demonstrate that the circumstances which justified the grant of

refugee status have ceased to exist. I was troubled by [16] of the decision, the judge appears to understand that the burden of proof on this issue was on the appellant. However, at [12] the judge correctly stated, *"It is for the respondent to show that the conditions in the DRC have changed."*

1. I find the respondent's first ground little more than a disagreement with the findings of fact of the First-tier Tribunal. In Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed, the Court of Appeal set out the following guidance:

"(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

(ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

12. In relation to the s72 rebuttal issue, Ms Simbi complained that the judge relied merely on the passage of time since the commission of the index offence and failed to consider all the factors. When pressed as to what factors in particular should have been considered, Ms Simbi pointed out that the appellant will have been on Police or court bail from 2014 and on immigration bail from his release from imprisonment, probably in 2018, and so will have had to be on his best behaviour during this period. Whilst this is not mentioned by the First-tier Tribunal decision, it does not follow that the judge was not cognisant of this factor. Furthermore, as Mr Karnik pointed out, this particular factor was not a point raised before the First-tier Tribunal or in the grounds of appeal to the Upper Tribunal. Ms Simbi conceded that there was no requirement for there to be independent or objective evidence. The judge was entitled to look at all of the evidence in the round and make a finding as to whether the presumption had been rebutted. I cannot agree that no reasonable and properly directed judge could have reached

the same conclusion. I do not find the conclusion irrational or perverse, but I am satisfied that the First-tier Tribunal Judge made a careful assessment of the available evidence and reached a conclusion open on the evidence. I am not satisfied that any material factor was overlooked, or certainly nothing that could have made any material difference to the conclusion reached on the rebuttal issue.

13. In relation to the second ground and the cessation argument, I am satisfied that the judge was fully aware that the burden was on the respondent to demonstrate a durable or permanent change in country circumstances. Ms Simbi complained that the judge relied on the self-serving YouTube evidence and failed to provide reasons why this piece of evidence put the appellant at risk. However, it is clear from a reading of the decision that at [14] the judge was rather sceptical as to the motivation for this evidence, uploaded only several months before the First-tier Tribunal appeal hearing. She was not satisfied that it had the reach claimed for it and also pointed out that when asked why he should not be removed to the DRC, the appellant did not mention any political view or activity.
14. However, it was open to the judge to conclude that the YouTube video effectively linked the appellant to his father, who remained at risk and who has been politically active in a neighbouring country. It was this link and not necessarily the content or source of the video that was significant in the view of the First-tier Tribunal. Furthermore, it is apparent from [15] of the decision that it was not only the video that was relied on. There, the judge made a careful assessment of the objective country background evidence, noting only modest improvement and that risks remain for those of adverse interest to the DRC authorities. The judge was, therefore, entitled to conclude that the respondent had failed to demonstrate that the conditions in relation to which the appellant was granted refugee status in line with his father had ceased to exist, and that by the link to his father, the appellant remained at risk.
15. In all the circumstances, I am satisfied that the challenged findings were open to the judge and are supported by cogent reasoning. Whilst a different judge may well have reached a different conclusion, I am satisfied that it was open to the First-tier Tribunal to reach the conclusion it did. Put another way, it cannot be said that the conclusion on risk for this appellant was one which no properly directed or reasonable judge could have reached. Similarly, the judge was entitled to find the s72 presumption rebutted on the evidence before the First-tier Tribunal.
16. It follows that no material error of law in the making of the decision of the First-tier Tribunal is disclosed by the grounds.

Notice of Decision

The respondent's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 March 2024