



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

Appeal Number: RP/00005/2018

THE IMMIGRATION ACTS

Heard at Field House

On 19 November 2019

**Decision & Reasons
Promulgated**

On 27 November 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SIMON [K]
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, a Senior Home Office Presenting Officer

For the Respondent: Mr A Burnett instructed by Wick & Co Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against the respondent's decision on 6 November 2017 to revoke his refugee status with reference to Section 72 of the 2002 Act.
2. That provision creates statutory presumptions that certain offences are a particularly serious crime and that an individual convicted of such offences is a serious criminal, with a rebuttable presumption (see section 72(6)) that he constitutes a danger to the community. In this appeal, the Secretary of State has certified the appellant's conviction as a crime

making him a section 72 serious criminal and raising the statutory presumption of dangerousness against him.

3. Section 72(10) requires the Tribunal to begin by deliberating whether the dangerousness presumption has been rebutted, before considering the appeal substantively. If the dangerousness presumption is not rebutted, the appeal must be dismissed. For the claimant, Mr Burrett accepted that he falls to be treated under the serious criminal provisions in section 72 but argued that the appellant was not now dangerous and that the presumption should be disapplied.
4. The First-tier Tribunal's reasons for disapplying the Section 72 presumption are given at [28]-[31] of the decision:-

"28. In giving his evidence the [claimant] impressed as being an intelligent young man who has learnt a lesson. He has undertaken courses such as RISE and alcohol awareness to address issues affecting his life. He continues to attend his local Christian Pentecostal Church every Sunday. In serving his sentence he has been punished for committing a 'particularly serious crime'. The undoubted dangerousness of the offence committed on a woman on her own at night in vulnerable circumstances cannot be underestimated. AS found by HHJ Clark when sentencing the [claimant] there were, acknowledging that alcohol had played a disinhibiting part, significant aggravating features falling within Category 1 of the Sentencing Guidelines of six to 11 years.

29. I am mindful of DC Look's assessment that she manages the [claimant] in circumstances of him being a low risk of re-offending, weight is attached to the opinion of [claimant's] probation officer, Stephanie Okwuadi. Notwithstanding a reduction of being of high risk to medium, the [claimant] *'has demonstrated he can address his offending and has shown great regret and remorse for his offending behaviour'* and that he *'continues to show willingness to address his offending behaviour'*.

30. Accordingly it has not been established that the [claimant] is a 'danger to the community' in circumstances where he has addressed his offending behaviour and the risk of re-offending is low.

31. In all the circumstances s. 72(10) of the Act does not apply. His appeal against revocation of his refugee status succeeds. The consequence is that the [claimant] is protected by the provisions of Article 33 recited above. The Convention prevents his removal from the UK. In these circumstances there is no need or requirement to address Article 3 as submitted by Mr Burrett."

5. The respondent's challenge is in effect a disagreement with the factual findings of the First-tier Judge. This morning at the hearing I heard argument from Ms Isherwood on behalf of the respondent and I have also been taken to the documents at pages 23, 35 to 36 and 37 to 69 of the First-tier Tribunal bundle which is the evidence which would have been before the First-tier Judge. I remind myself of all the relevant authorities and also that I must not go behind the finding of fact by a First-tier Judge

unless it is perverse *Wednesbury* unreasonable or incomprehensible to me as set out at paragraph 90 in the judgment of Lord Justice Brooke in *R (Iran) v The Secretary of State for the Home Department* [2005] EWCA Civ 982.

6. The finding made by this judge on these facts is none of those. The evidence is that the claimant, as he was below, committed a single serious offence while intoxicated and that he has taken every opportunity that was offered to him for rehabilitation. On that basis it was open to the judge to find that the claimant now no longer met the dangerousness test and to allow the claimant's appeal for the reasons he gave.

DECISION

7. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed **Judith AJC Gleeson**
November 2019
Upper Tribunal Judge Gleeson

Date: 22