



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-000017**  
**First-tier Tribunal Nos:**  
**RP/50018/2021**  
**LR/00037/2022**

***Extempore decision***

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 21 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ZAMAN UDDIN MAZARI**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr E. Tufan, Senior Home Office Presenting Officer  
For the Respondent: Ms C. Meredith, Counsel, instructed by Duncan Lewis Solicitors

**Heard at Field House on 5 May 2023**

**DECISION AND REASONS**

1. By a decision promulgated on 9 November 2022 First-tier Tribunal Judge Roots ("the judge") allowed an appeal brought by the appellant, a citizen of Afghanistan born on 30 July 1992, against a decision of the respondent dated 5 February 2021 to revoke the refugee status that was 'granted' to him on 11 February 2010. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").
2. The Secretary of State now appeals to this Tribunal against the decision of the judge with the permission of Upper Tribunal Judge Pickup.

3. Although this is an appeal brought by the Secretary of State for ease of reference, I will refer to the appellant before the First-tier Tribunal as “the appellant” in these proceedings, and to the Secretary of State simply as the Secretary of State.

### **Factual background**

4. The appellant arrived in the United Kingdom in 2008 as an unaccompanied asylum seeking child. He claimed asylum. The claim was refused. He was granted discretionary leave, however, and in February 2010 he was granted asylum in his capacity as a Christian convert. The appellant held leave in that capacity until 20 May 2019.
5. On 15 December 2017 the appellant pleaded guilty in the Crown Court at Blackfriars to causing grievous bodily harm with intent under section 18 of the Offences Against the Person Act 1865. For those offences he was sentenced to a total of six years’ imprisonment, the sentencing judge having awarded the appellant full credit, albeit reluctantly, for his plea of guilty. The equivalent sentence after a trial that the appellant would have had to have served had he not pleaded guilty was therefore one of nine years’ imprisonment. There was also a suspended sentence order that was in force in relation to the appellant for eighteen weeks. That sentence was activated at the same time. For those convictions, the Secretary of State sought to deport the appellant.
6. One of the first operative steps that the Secretary of State took was to issue the appellant with a notice under section 72 of the 2002 Act. That notice led to an exchange of correspondence between the Secretary of State and the appellant. The Secretary of State also sought the views of the UNHCR, as is standard practice in revocation cases. That process culminated in the decision under challenge to revoke the appellant’s refugee status under rule 339AC of the Immigration Rules. That paragraph states as follows:

“This paragraph applies where the Secretary of State is satisfied that: Article 33(2) of the Refugee Convention applies in that:

- (i) there are reasonable grounds for regarding the person as a danger to the security of the United Kingdom; or
  - (ii) having been convicted by a final judgment of a particularly serious crime, the person constitutes a danger to the community of the United Kingdom (see section 72 of the Nationality Immigration and Asylum Act 2002)”.
7. The appellant appealed against the decision revoking his refugee status to the First-tier Tribunal. The issues for resolution before the judge were solely in relation to the Secretary of State’s decision that paragraph 339AC of the Immigration Rules applied to the appellant. So much was clear from the respondent’s review that was before the First-tier Tribunal and also the contents of the decision itself.

### **Issues on appeal to the Upper Tribunal**

8. As drafted, the grounds of appeal made two primary criticisms of the decision of the judge. There is a dispute which I shall resolve in due course as to whether

there were in fact two grounds or whether, as contended by Ms Meredith for the appellant, there is only a single ground. Taken at their highest, the grounds of appeal criticise the decision of the judge on the following two bases.

9. First that, notwithstanding the judge's substantive analysis in which he found that the appellant had rebutted the presumption under Section 72, the judge nevertheless had stated at [12] of the decision that the appellant had not rebutted that presumption.
10. The second ground of appeal criticised the judge's failure to consider of his own motion the issue of cessation.
11. Ms Meredith submitted a helpful rule 24 notice, the contents of which I shall consider in due course.
12. In support of the grounds of appeal Mr Tufan contended that the judge's decision featured a conflict. He submitted that paragraph 1 of the grounds was sufficient to raise the prospect of that issue being in conflict, such that Upper Tribunal Judge Pickup had identified that as an arguable error of law in his grant of permission to appeal. Mr Tufan further submitted that there are a number of "tangential" matters which were open to the Secretary of State to pursue before the Upper Tribunal by way of a broader criticism of the judge's findings of fact that the presumption under section 72 had been rebutted. Mr Tufan very realistically abandoned what he categorised as the second ground of appeal concerning the cessation point. Very fairly, he accepted that that had not been an issue before the judge and that it was therefore not in error for the judge not to have considered it of his own motion.
13. In seeking to resist the appeal Ms Meredith relied on the rule 24 notice. The central thrust of that document and of Ms Meredith's submissions insofar as the conflict point, as I shall term it, was concerned was that this was not a properly pleaded ground of appeal at all. Paragraph 1 of the Secretary of State's grounds simply recorded in narrative form the analysis that featured in the judge's decision and did not engage in a substantive criticism of the terms of the decision itself. The only substantive criticism in the application for permission to appeal, submitted Ms Meredith, was in relation to the very matters which Mr Tufan abandoned at the hearing this morning.

### **No material error of law**

14. The first issue for my resolution is to address what was pleaded in the grounds of appeal. Paragraph 1 of the grounds states as follows:

"At [12] the FTTJ finds that the s.72 resumption [sic] in favour of the appellant's deportation has not been rebutted in respect to the seriousness of the offence. However, the FTTJ then goes on to find that the appellant does not pose a danger to the community".

In my judgment, although it could have been clearer, the formulation of the ground of appeal in this paragraph was sufficient to raise a criticism of the judge's decision on internal consistency grounds. This is clear from the second sentence which is prefaced with the word "however". The use of that term does not merely convey a narrative description of the contents of the judge's decision, but when read in the context of that short paragraph as a whole, it draws

attention to what is clearly an inconsistency within the judge's decision. It will be helpful to summarise in a little more depth what the judge said at para. 12. The judge said:

"The burden is upon him [the appellant] to rebut this presumption. I take account of all the submissions and evidence. The appellant received a lengthy sentence of six years on 22/1/18. In addition a previous suspended sentence totalling 18 weeks was activated on the same date. The length of sentence is the primary indicator of the severity of the offence. The appellant received a lengthy sentence. **I take account of all the submissions and evidence but I do not accept that the appellant has rebutted the presumption, given his conviction and lengthy sentence**". (Emphasis added)

The criticism raised by paragraph 1 of the grounds of appeal clearly highlights the finding at para. 12 of the judge's decision that the appellant had not rebutted the presumption. That paragraph must then be read alongside paras 12 to 22, in which the set out why he found that the appellant had in fact rebutted the presumption. That conflict was a sufficient basis for Judge Pickup to grant permission to appeal in the following terms, at para. 3 of his decision:

"It is arguable that the finding at para. 12 that the appellant had not rebutted the presumption 'given his conviction and lengthy sentence' is entirely inconsistent with the conclusion that he had rebutted the presumption as stated at para. 13 and para. 21 of the decision. Whilst it may be that there is a grammatical error, it is not entirely clear, and the possibility arises that the judge's reasoning is confused. The ground may be weak in light of the findings as a whole but is arguable".

15. I therefore find that, on a fair reading of the grounds of appeal alongside the contents of the judge's decision, that there is a distinct error of law pleaded under this heading. If any further clarity is needed, one simply needs to look to Judge Pickup's decision granting permission to appeal.
16. The question next arising is whether that conflict, which on any view is present in at least a textual, form betrays or reveals a material error of law on the part of the judge.
17. As outlined earlier, the substantive analysis of the judge featured a series of detailed and comprehensive reasons as to why he had found that the section 72 presumption had been rebutted. The analysis adopted by the judge has not been challenged by the Secretary of State in the grounds of appeal. Mr Tufan sought to expand the grounds of appeal orally in submissions before me. When I highlighted to him that his submissions sought to stray significantly beyond the grounds upon which the Secretary of State enjoyed permission to appeal, Mr Tufan accepted that he did not wish to press those points, and accepted that the Secretary of State did not have permission to advance further criticisms of the judge's decision on those bases.
18. In my judgment, there is considerable force in the submissions of Ms Meredith that the substantive analysis of the judge's consideration of the section 72 point is, properly understood, the judge's true decision. So much is clear from the otherwise correct self-direction the judge gave himself at para. 12, and the

reasons the judge outlined at para. 13 and following as to why the appellant did not present a danger to the community. Those reasons include thirteen individual subpoints given at para. 15 of the decision which concerned the reduction in the risk of reoffending presented by the appellant, the circumstances which the judge found led him to commit the offence for which the Secretary of State sought to revoke his refugee status (at para 15(e)), the fact that he no longer drinks alcohol (para. 15(f)), that he has not reoffended since his release from prison in November 2020 (para. 15(g)), there had been improvement in his mental health (para. 15(h)), amongst other reasons. The judge went on to explain that the appellant had benefitted from support and evidence from friends and supporters for the reasons he gave at para. 18. At para. 19 the judge outlined the evidence of the minister of the church that the appellant attends in London and the voluntary work that he has been undertaking in that context. Subsequently, at para. 20, the judge addressed the submissions of the Presenting Officer. He described those as “in some sense quite neutral”. The judge gave reasons (which have not been challenged by the Secretary of State) for accepting the submissions advanced on behalf of the appellant and rejecting those which had been advanced on behalf of the Secretary of State. That led to the judge’s operative conclusion at para. 22 that the section 72 certificate and presumption had therefore been rebutted. Accordingly, the judge found, the appeal against the revocation of refugee status was allowed.

19. Drawing this analysis together, I find that the sole ground of appeal which Mr Tufan pursued in this Tribunal arose from an unfortunate and careless slip of the pen on the part of Judge Roots which did not reveal an error of law when read in the context of the decision as a whole. I therefore dismiss this appeal brought by the Secretary of State.

## **Costs**

20. There are two ancillary matters that I must deal with.
21. First there is the question of costs. Ms Meredith has applied for unreasonable or wasted costs as a result of what she contends was an appeal that should not have been brought. She submitted that this was an appeal that should never have been brought. The Secretary of State was invited to abandon her appeal in correspondence before this hearing, and no response was received. Ms Meredith submitted that this second ground of appeal was so wholly without merit as to have wasted a considerable amount of time and effort on the part of those who instruct her, and for her personally, which all had to be funded by the Legal Aid Agency. The conflict between para. 12 and the judge’s remaining reasoning was so plainly an immaterial error that permission to appeal should never have been sought.
22. In my judgment this is not a case in which it is appropriate to make an unreasonable costs order. The decision of the judge, as I have found, featured a clear conflict between what was stated at para. 12, on the one hand, and the remaining analysis, on the other. That conflict was sufficient in the terms to merit a grant of permission to appeal by Judge Pickup, who considered that that error was arguable.
23. It is true that Mr Tufan abandoned reliance on the remaining ground of appeal concerning the judge’s claimed failure to consider the cessation point of his own motion. However, he will have had the benefit of Ms Meredith’s comprehensive

rule 24 response when reaching that conclusion. That, in my judgment, is how litigation in this chamber should operate. Where a point is pursued, the opposing party has the opportunity to resist the point in writing before the hearing. That took place, and the consequence was that a considerable amount of time at the hearing itself was saved. There is nothing to the point that the Secretary of State did not reply to the letter that was apparently sent by those who instruct Ms Meredith. Permission to appeal had been granted by Judge Pickup, who expressly identified that the judge's decision featured an entirely inconsistent conclusion to that which it featured at para. 12. In those circumstances, this is not a case in which it may properly be said that the conduct of the Secretary of State in bringing, conducting or defending the proceedings was unreasonable such that this Tribunal should exercise its costs jurisdiction.

## **Anonymity**

24. I turn next to question of anonymity. I have heard submissions from Ms Meredith. I take into account that in *Kambadzi v Secretary of State* [2011] UKSC 23 at [6] Lord Hope said that, "It is no longer the case that all asylum seekers are a class entitled to anonymity in this Court. The making of an anonymity order has to be justified". There is no risk of this appellant being sent back to Afghanistan. The Secretary of State accepts that his removal is not in issue. The evidence before the First-tier Tribunal was that he seeks to practise his faith openly and has not sought to conceal his attendance at the church that he attends or is otherwise ashamed of his faith. There is no basis, on those grounds, therefore, to maintain an order for anonymity. The remaining issue concerns the appellant's mental health. The guidance issued by the Presidents of the Upper Tribunal at [31] states that:

"The revelation of the medical condition of an appellant will not normally require the making of an anonymity order unless disclosure of the fact of such a condition gives rise to a real likelihood of harm to a person, or in the rare case where UTIAC has required confidential medical details to be provided to it such as a request for a medical/psychiatric report".

In my judgment there are no details in the decision of Judge Roots, or the decision of this Tribunal, which merit making an anonymity order. I accept that the appellant has experienced a number of mental health conditions in the past, but those conditions manifested themselves most vividly ahead of the criminal proceedings in Blackfriars Crown Court. There was no anonymity order made by that court, and in my judgment the importance of the principle of open justice is such that there should be no anonymity order in these proceedings. There is no evidence that would give rise to any suggestion that the appellant will be at any form of risk in this jurisdiction. I therefore revoke the anonymity order made by Judge Roots.

## **Notice of Decision**

The decision of Judge Roots did not involve the making of an error of law such that it must be set aside.

The appeal of the Secretary of State is dismissed.

The anonymity order made by Judge Roots is revoked.

Appeal Number: UI-2023-000017  
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**Stephen H Smith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**5 May 2023**