



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005881
First-tier Tribunal No: RP/50018/2020
(LP/00315/2021)

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AAA (LIBYA)
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Schwenk, counsel (instructed by Wilsons solicitors LLP)
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 16 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. To avoid confusion, I shall refer in this decision to the parties as they were before the First-tier Tribunal i.e. to the Secretary of State as the 'Respondent' and AAA as the 'Appellant'.
2. This matter concerns an appeal against the Respondent's decision letter of 2 October 2020, revoking the Appellant's refugee status.
3. The background, taken from the Respondent's papers, is as follows.
4. On 22 February 1993, the Appellant entered the UK and was granted leave to enter as a visitor. On 19 October 1993, he made an application for asylum. On 22 June 1998, he was granted refugee status and limited leave to remain in the UK. On 30 October 2002, he was granted indefinite leave to remain in the UK. On 5 December 2005, he was convicted of rape and was later sentenced to a term of 7 years' imprisonment. His indefinite leave to remain was revoked on 6 October 2010. His appeal against this decision was dismissed on 11 April 2011. On 29 June 2016, he was issued with a decision to deport pursuant to the UK Borders Act 2007 (he claims he did not receive this letter). On 15 June 2020, he was issued with a Notice of intention to revoke his refugee status. The UNHCR were notified of this and they made written comments in response by letter of 16 July 2020. On 2 October 2020, a decision was made to revoke the Appellant's refugee status by virtue of Paragraph 339AC(ii) of the Immigration Rules, on the basis that he has been convicted of a particularly serious crime and constitutes a danger to the community ("the Decision Letter").
5. The Appellant appealed that decision. He admitted that he had been convicted of a particularly serious crime but disputed that he constituted a current danger to the community. He said he had not reoffended since being released from custody in 2010, had a strong support network, no longer used alcohol and was complying with the treatment regime for his mental health conditions which were all protective factors meaning he was at low risk of future offending.
6. His appeal was heard by First-tier Tribunal Judge Galloway ("the Judge") at Manchester on 11 April 2022, who later allowed the appeal in its entirety in her decision promulgated on 12 April 2022. At the hearing before the Judge, the Appellant was represented by his solicitor and no one attended on behalf of the Respondent.
7. The Respondent applied for permission to appeal to this Tribunal on the basis that the Judge had given inadequate reasons and/or failed to take into account material matters.
8. Specifically, the grounds assert that:
 - (a) the Judge has erroneously assessed risk on the basis of the Appellant's lack of convictions since the index offence and given inadequate reasons for concluding that he is not a danger to the community whilst failing to take account of the fact that the risk he poses is managed;
 - (b) when considering the evidence, the Judge does not distinguish between managed risk and whether the Appellant is inherently a danger to the community. Managed risk does not mean that the Appellant is not a danger to the community. For example, it would be perverse to conclude that an

individual whose risk is managed by imprisonment is not a danger to the community and therefore could rebut a s.72 presumption. Restivo (EEA – prisoner transfer) [2016] UKUT 00449(IAC), Chege (“is a persistent offender”) [2016] UKUT 00187 (IAC) @59 and Binbuga [2019] EWCA Civ 551 @46 cited.

- (c) The Judge has failed to properly consider the evidence which included:
- (i) A GP letter dated 12/7/21 stating “if he were to stop taking these medications, this would cause significant harm to himself and potentially others”
 - (ii) An NHS letter dated 22/10/21 stating that “he will remain low risk from his mental illness to public as long as he continues to take his medication”
 - (iii) the entirety of the Sex Offender Manager’s letter dated 2/6/21, which identified the risk of reoffending as medium in circumstances of a “lack of income/job, mental health and social depression and no positive routine.”

9. Permission to appeal was refused by First-tier Tribunal Judge Grey on 2 May 2022, stating:

“1. The in time Grounds assert that the Judge erroneously assessed risk on the basis of the appellant’s lack of convictions since the index offence, gave inadequate reasons for concluding that the appellant is not a danger to the community and failed to take into account the fact that the risk the appellant poses is managed.

2. The Judge found that the appellant was convicted of the index offence in 2005 and that even if he had served a full 7 years of his custodial sentence, which he probably did not, has been within the community for 10 years without apparently causing harm to others. The Judge found that other than a caution for a minor shoplifting offence in 2012, the appellant has not re-offended since his conviction in 2005.

3. The Grounds seek to assert that the appellant’s lack of convictions since the index offence are attributable to the matters referred to in the select sections of cases referred to in the Grounds. However, in reaching her decision the judge referred to the appellant’s lack of offending for a significant period of time since his release from prison and for a large portion of this period the appellant was not subject a deportation decision.

4. The fact that the appellant has been supported by mental health professionals and is treated with appropriate medication does not prevent that Judge from making the findings that she did. The Decision and Reasons demonstrate that the Judge was fully aware of all relevant circumstances including the fact that any risk that may be posed by the appellant on account of his mental health condition was at least in part managed by medical treatment. The Judge considered whether the appellant was compliant with his treatment and considered what further support was available to him. In finding that the appellant was compliant with his treatment, and that he benefits from a support network of friends and family, the Judge was entitled to conclude that the appellant is not a danger to the community of the United Kingdom and gave clear and sustainable reasons for such finding. The Decision and Reasons demonstrate that the Judge appropriately considered the evidence available to her, including that of a consultant psychiatrist, the appellant’s care-coordinator and social worker, and a police officer from the SexOffender Management Unit. The Judge noted that the appellant is now managed at a low

level risk on the Sex Offender Register and that the appellant's Offender Panel has downgraded his risk to low.

5. The Grounds of the application for permission amount to no more than an attempt to reargue the appellant's case and fail to identify any arguable error of law. The Judge provided entirely adequate reasons for reaching her finding that the appellant is not a danger to the community.

6. Permission to appeal is refused."

10. On 13 May 2022, the Respondent applied to the Upper Tribunal for permission to appeal on the same, renewed grounds asserting that First-tier Tribunal Judge Grey had failed to adequately engage with those grounds.

11. Permission to appeal was granted by Upper Tribunal Judge Pickup on 1 January 2023, stating:

"1. The respondent renews the application for permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Galloway) allowing the appellant's appeal against the respondent's decision of 2.10.20 to revoke his refugee status.

2. The primary issue in the appeal was whether the appellant, convicted of a particularly serious crime (rape), constituted a danger to the community of the UK so as to rebut the presumption under s72.

3. It is arguable that the judge of the First-tier Tribunal failed to adequately distinguish between inherent and managed risk (by treatment including medication). It is arguable that the risk assessment is flawed by too great a reliance on the absence of subsequent convictions and inadequate consideration of the risks were the appellant not to continue with treatment or for his mental health to be no longer managed. The risk of reoffending was said by the Sex Offender Manager to be medium in the particular circumstances identified in the author's letter.

4. For the reasons explained above, an arguable material error of law is disclosed by the grounds."

12. The Appellant filed a response to the appeal submitting that, essentially, the Judge was entitled to reach the conclusions that she did and gave adequate reasons for reaching those conclusions. The following main points were made:

(a) the origin of the Respondent's concept of inherent risk/danger is unknown. The cases cited by the Respondent, rather than support her argument, demonstrate its weakness;

(b) the comparison between a person who is prevented from reoffending because they are incarcerated and someone who is compliant with a regime of medication designed to alleviate their mental health problems is tenuous. It is obviously not the Appellant's incarceration which has prevented the Appellant reoffending because he has not been incarcerated since at least 2010;

(c) the Judge was not under any obligation to consider the likely future risk of reoffending on the basis that the Appellant may not comply with his medical treatment;

- (d) the Respondent is seeking to put forward arguments that she failed to make earlier, either in the Decision Letter or at the hearing before the Judge, which is unfair.

The Hearing

13. The matter came before me for hearing on 16 November 2023.
14. Mr Schwenk attended on behalf of the Appellant and Mr Tan attended on behalf of the Respondent.
15. Mr Tan took me through the grounds of appeal in detail, adding little of substance save as to refer to further pieces of evidence saying the risk posed by the Appellant would increase were he to fail to comply with his medication.
16. In answer to questions from me seeking clarification, Mr Tan confirmed that the Appellant's offence was committed in 2005 when his current medical diagnosis had not yet been made, although he had been diagnosed with depression. Mr Schwenk said that [20] of the Judge's decision is relevant in this regard.
17. I asked whether the argument about there being inherent, as opposed to managed, risk, was raised before the Judge. Mr Tan said the Respondent had not been represented before the Judge such that it was not raised at the hearing. The Decision Letter and Respondent's review were discussed and it was agreed that they did not contain mention of it either. Mr Tan said it was for the Appellant to rebut the presumption about being a danger.
18. Mr Tan said that if an error is found, it goes to the sole issue that needed to be considered such that the Judge's decision would need to be set aside, but said it could be dealt with either by remittal to the First-tier or by being maintained by the Upper Tribunal.
19. In reply, Mr Schwenk took me through the Appellant's rule 24 response in detail, adding little more to what was contained therein. He said the grounds of appeal amounted to mere disagreement, and the Respondent was attempting to raise new grounds of opposition which were not in issue before the Judge. He said the Judge correctly addressed the two-stage test as to whether the Appellant had both committed a particularly serious crime and posed a current danger to the community; the Appellant admitted the first part and the Judge was entitled to find the second part was not made out, giving a number of sound reasons for doing so with reference to the evidence. He asked me to dismiss the appeal but said if an error was found, it would only be fair to remit it to the First-tier Tribunal to be heard de novo.
20. Mr Tan had no further reply.
21. At the end of the hearing, I reserved my decision.

Discussion and Findings

22. At [1] - [4] of her decision the Judge sets out the correct background to the appeal. At [3] - [7] she sets out the correct legal framework, including the test contained in paragraph 339AC(ii) of the immigration rules (requiring the Respondent to show that she was satisfied that the Appellant had been convicted by a final judgment of a particularly serious crime and that he constitutes a

danger to the community of the United Kingdom) and section 72 of the Nationality Immigration and Asylum Act 2002 under which a person is presumed to have been convicted by a final judgment of a particularly serious crime if they have been convicted in the UK of an offence and sentenced to imprisonment for at least two years.

23. In [8] she records the Appellant's concession that his conviction in 2006 is a particularly serious crime, and states the sole issue to be determined is whether the Appellant constitutes a danger to the community of the UK, bearing in mind the presumption under section 72.
24. At [9] she describes the Appellant's case, noting that the Appellant was diagnosed with Paranoid Schizophrenia after the offence. In arguing that he did not constitute a danger to the community of UK, the Judge notes the Appellant relies on the following matters:
 - (a) He is remorseful, regrets the offence and has served his prison sentence;
 - (b) He suffers from significant mental health difficulties and is under the care of mental health services; he has engaged with mental health staff, police, and probation services and those working with him in the mental health/social work sphere have not raised concerns as to future reoffending;
 - (c) he has not committed any further criminal offences (apart from a minor caution for shoplifting in 2012);
 - (d) he has a strong support network of family and friends;
 - (e) the offence in question is particularly old (he was convicted 17 years ago);
 - (f) the police now deem him to be low risk; and
 - (g) his Psychiatrist and Care Co-ordinator consider him to be low risk to others (so long as he remains compliant with medication).
25. At [10] - [13] the Judge describes the Respondent's case, the main points being:
 - (a) removal to Libya would be contrary to its obligations under Article 3 ECHR and, therefore, there is no planned removal;
 - (b) the sentencing remarks stated that the nature of the Appellant's offence made it a particularly serious offence, which the Appellant has conceded, and that he was a danger, particularly to vulnerable people;
 - (c) at the time of the Decision Letter, no evidence had been submitted to indicate that rehabilitation measures had been completed or that the Appellant posed a low risk of re-offending;
 - (d) by virtue of the offence, the Appellant had shown that he was a danger to society and was somebody who may well re-offend in the same way in the future;
 - (e) the Appellant had failed to rebut the presumption under s 72 of the 2002 Act;

(f) the Respondent's review maintained this position.

26. At [14] the Judge records her decision to proceed with the hearing in the absence of a representative of the Respondent, noting no application for an adjournment had been made.

27. The oral evidence and submissions made on behalf the Appellant are recorded at [15] - [18], noting the Appellant himself did not give oral evidence due to his mental health conditions.

28. The Judge's findings are made in [19] - [29], first reminding herself in [19] of the sole issue to be determined. At [21] she states:

"I have determined on the facts of this appeal, that the Appellant has rebutted the presumption under section 72(2) of the 2002 Act. I find that (on the current evidence before the court) he does not constitute a danger to the community of the UK".

29. The reason she gives are as follows:

(a) The Appellant has not been convicted of any further offences (of a sexual nature or otherwise) since the rape conviction in 2005 [21];

(b) Even if he served his full prison sentence, he has been within the community for 10 years without apparently causing harm to others [21];

(c) the Appellant has provided evidence that he is considered low risk by those who work with him, with particular reliance on:

(i) the letter from Dr Mostafaie-Mehr (Locum Consultant Psychiatrist), dated 22 October 2021 who had seen the Appellant on only two occasions, but had access to the notes and to the treating team [22]. At [23] the Judge states she has taken into account that Dr Mostafaie-Mehr was unaware of the forensic history and forensic issues are outside of his area of expertise. She notes the doctor's view that the Appellant will remain a low risk to the public if he continues to take his medication.

(ii) the letter from Ms Stockdale (Care Co-ordinator and qualified Social Worker) who confirms that the Appellant's mental health presentation has improved over time, his risks have decreased, his Offenders Panel recently downgraded his risk to low, he has remained concordant with medication which plays a vital role in keeping him well and he has family support, particularly that provided by his sister and nephew [24].

(iii) the email from PC Dawn Dowling (dated 2 June 2021) from the Sex Offender Management Unit, confirming the Appellant is managed at a low-level risk on the sex offender register, has not reoffended since the index offence (other than a minor shop lifting offence in 2012 for which he received a caution) and his risk of sexual reoffending was deemed to be low and there were no areas of high concern [25].

- (d) the evidence of the two witnesses who attended court was credible, it was accepted that the Appellant has shared the history of his offence with friends and family and that he has a support network in place which is likely to have impacted upon (and continues to impact upon) his lack of reoffending [26];
- (e) Whilst the sentencing remarks reflected the position at the time (in 2007), which was that the offence was extremely serious and the Appellant was a danger, particularly to vulnerable people, due to all the evidence in the round (particularly the evidence referred to above), the Appellant is no longer the danger that he was in 2007 [27] (with reference to [20]).
30. At [28] the Judge confirms her conclusion that the Appellant has rebutted the presumption in section 72 and specifically notes that:
- “My decision on this point may well have been different, had the decision been made within a short time of the offence or even within a short time of the Appellant’s release from prison. However, with the benefit of the evidence obtained since his release, I accept that the Appellant has shown that he is not a danger (on the current evidence before the court). There are risks associated with his mental illness, but these are addressed by treatment and medication (which I am told by his care-co-ordinator he is compliant with)”.
31. This leads her to find at [29] that:
- “The Appellant’s appeal against the revocation of his refugee status must succeed on grounds that the decision to revoke that status breaches the United Kingdom’s obligations under the Refugee Convention”.
32. I fail to see what is inadequately reasoned about the Judge’s decision. She clearly states her conclusion and her reasons for reaching it, which reasons which I find are sound and were open to her to make on the evidence. It is clear that the lack of offending since the index offence is not the only reason for the decision.
33. It can be seen that the Respondent did not attend the hearing and so any issue of ‘inherent’ versus ‘managed’ risk was therefore not raised at the time. As was discussed at the hearing before me, there is also no mention of it in the Decision Letter or the Respondent’s review. As the Judge’s decision confirms at [9], the Appellant’s diagnosis of paranoid schizophrenia had not even been made at the time of the offence so it is unclear how it can be argued now that a failure to manage this condition could/would lead to him committing a similar offence in future. As this argument was not raised before the Judge, the Judge cannot be expected to have addressed it.
34. In any event, I find the Respondent has not made clear what ‘inherent risk’ means beyond referring to the fact of the offence itself. It cannot be right that once somebody commits an offence, the risk of them committing the same offence in future remains the same for the rest of their life, no matter the circumstances. Else why would the presumption in section 72 be capable of rebuttal? It would also render redundant any risk assessments conducted by those in the prison, probation and other services. I find this is recognised by the Judge in her comments at [28] when she says her decision may well have been different had the appeal come before her closer to the time of the offence or the Appellant being released from prison. Instead she was entitled to find that the evidence showed the Appellant now posed a low risk.

35. I find the cases cited by the Respondent in the grounds to be of little relevance to the appeal. At the time of the hearing and Judge's decision, the Appellant was no longer in prison nor being actively managed by any prison or probation personnel in the sense referred to in the quotation from Restivo (EEA – prisoner transfer) [2016] UKUT 00449(IAC). Nor was there was any evidence that the Appellant was a persistent offender or subject to bail, a community order or suspended sentence as referred to in the quotations of Chege (“is a persistent offender”) [2016] UKUT 00187 (IAC) and Binbuga [2019] EWCA Civ 551. This is a fact noted by the Judge at [21] when she says:

“Even if he served the full 7 years of his sentence (which he probably did not), he has been within the community for 10 years without apparently causing harm to others”

having also noted that he had only ever committed one, albeit particularly serious, offence and since received a caution for shoplifting [3] [9].

36. The Respondent says the Judge failed to take into account evidence that the Appellant would pose a significant risk if he ceased to comply/engage with his medication and mental health support or lost his income/job and fell out of his routine. I disagree. It is clear that the Judge did take this into account, as she specifically cites in [23] and [24] the evidence of Dr Mostafaie-Mehr and Mrs Stockdale which makes such points. Whilst there may have been further evidence in this vein, it is trite that a Judge need not refer to each and every single piece of evidence before them provided they have included sufficient detail so that the reasons for the decision can be understood (see, for example, MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)).

37. The evidence before the Judge was that the Appellant was complying with his medication, engaging with the necessary services and had a strong support network, which the Judge specifically notes at [26] and [28]. She notes at [28] that there are risks associated with the Appellant's condition but finds “on the current evidence before the court” these are addressed by treatment and medication. There was no obligation upon the Judge to conduct an assessment of what may or may not happen if the Appellant were to cease his compliance and engagement. It is unclear on what basis the Respondent says the Judge could or should have done so, as this would not have been an assessment on the facts at the time of the hearing and could therefore have constituted an error of law.

38. Overall, I find no errors of law disclosed. Accordingly, I find the grounds are not made out.

39. To conclude, I find the decision is not infected by any material errors of law. The decision therefore stands.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Galloway dated 12 April 2022 is maintained.

2. Given the claim concerns the Appellant's status as a refugee, an anonymity order is made.

L. Shepherd
Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber

23 November 2023