



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000157
On appeal from: PA/00827/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 June 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

A M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sarah Pinder of Counsel, instructed by Duncan Lewis solicitors

For the Respondent: Mr David Clarke, a Senior Home Office Presenting Officer

Heard at Field House on 20 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant.

Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant challenges the decision of the First-tier Tribunal to dismiss his appeal against the respondent's decision to refuse him international

protection as a refugee or leave to remain in the UK on human rights grounds. He is an Ugandan citizen.

2. The basis of the appellant's claim is the risk to him as an anti-government blogger, and a contributor to Radio Katwe. He fears that if returned to Uganda he will be arrested, detained, and ill-treated.
3. For the reasons set out in this decision, I have come to the conclusion that [conclusion and outcome].

Procedural matters

4. **Mode of hearing.** The hearing today took place as a blended face to face and Microsoft Teams hearing. The appellant, who had tested positive for Covid-19, attended remotely with all other parties being present in the hearing. I am satisfied that the hearing was completed fairly, with the cooperation of both representatives.

Background

5. The appellant claims that he was ill-treated in Uganda by reason of his anti-government views. At interview he claimed to have been a member of the Forum for Democratic Change (FDC) in 1999, but in his later witness statements he said that it was the Reform Agenda, which was one of the groups which later merged to form the FDC. The FDC was not formed until 16 December 2004.
6. The appellant has been in the UK since 2001 or 2002: he made an asylum claim in March 2006, having been arrested for traffic offences, but beyond the screening interview he did not proceed with that application. In July 2008, the appellant made an application for an EEA spouse residence card, which was refused in September 2010 and the refusal maintained on 4 July 2011. By that time, the appellant had been in the UK without leave for approximately 10 years.
7. In June 2010, the appellant and his then partner had a son together, but the relationship ended in March 2011 and she now lives in Scotland.
8. On 14 April 2011, the appellant was convicted in the Basildon Crown Court of conspiring to facilitate unlawful immigration, and sentenced to 3 years' imprisonment. On 16 January 2012, he pleaded guilty at the same Court to three further counts of conspiracy to facilitate unlawful immigration and was sentenced to 30 months' imprisonment.
9. The appellant was given an opportunity to submit representations about the making of a deportation order and did so on 14 June 2011, relying on the Refugee Convention and human rights. On 22 January 2013, his claims were refused and a deportation order made. The respondent concluded that section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended) applied to him. The appellant was released in 2013 and has not offended since then. In December 2014, following legal

proceedings, he was permitted to begin having contact again with his son, who would then have been 4 years old.

10. The appellant appealed the respondent's decision refusing to revoke the deportation order. On 22 June 2015, First-tier Judge Pickup (as he then was) dismissed the appeal and he was appeal rights exhausted on that appeal on 16 September 2015.
11. The appellant was not removed and did not embark for Uganda. Instead, on 26 February 2019, he made another application for international protection as a refugee or leave to remain in the UK on human rights grounds, which was refused on 20 July 2020. It is against that decision that the appellant now appeals, relying on the Refugee Convention and Articles 2, 3 and 8 ECHR.
12. The First-tier Tribunal dismissed the appellant's appeal, examining new evidence adduced but finding that it did not oust the negative credibility findings made by First-tier Judge Pickup, and that the section 72 presumption of dangerousness had not been rebutted. The judge considered the medical evidence of Dr Salter and Dr Sen, regarding the appellant's suicide risk and post-traumatic stress disorder, and in Dr Sen's opinion, also depression. Both reports say that the appellant would be endangered by returning him to Uganda as he would be retraumatised and would be at increased risk of suicide.
13. The appellant also relied on his connection with his son, born in June 2010 (so now almost 13 years old) who lives in Scotland with the appellant's former partner. The judge accepted that there was oral and documentary evidence of regular travel by the appellant to Scotland: there was now contact and a genuine and subsisting relationship, albeit necessarily limited (once a fortnight) and under the close supervision of his former partner, who did not let them out of her sight. There was little evidence about how the appellant's removal might affect his son. The appellant's former partner had initially opposed contact, but later permitted it on that limited basis. The First-tier Judge did not consider that to be sufficient evidence to bring the appellant within Exception 2 to section 117C of the 2002 Act, that it would unduly harsh for the appellant's son if he were removed.
14. Despite the long delay since the index offences, the First-tier Judge did not consider that that the delay from 2016 to 2019 was so extreme as to diminish the public interest in removing him.
15. The appellant appealed to the Upper Tribunal.

Permission to appeal

16. The grounds of appeal contained multiple irrationality contentions, and also argued that the First-tier Judge had failed adequately to consider the expert country evidence of Ms Karen O'Reilly, produced to rebut the finding in the Pickup decision as to risk on return.

17. Permission was granted on all grounds. In particular, First-tier Judge White considered that:

“2. ... It is arguable that the First-tier Tribunal Judge failed to adequately consider the expert country evidence which engaged with the adverse credibility findings previous made against the Appellant and further failed to consider the effect of the Appellant’s vulnerabilities caused by mental ill-health on his credibility. It is further arguable that the finding that the Appellant continues to be a danger to community was perverse in view of the fact that the offending behaviours took place 10 years prior to the hearing and erred in relation to the weight to be attached to the public interest.”

18. The respondent in her Rule 24 Reply resisted the grounds of appeal on the following basis:

“3. There is nothing in the determination to support the assertion in the grounds that the FTT did not consider the expert report relied on by the appellant. The FTT judge, in para 16 of the determination, carefully looked at the new evidence in the context of the previous findings of the tribunal and correctly followed the Devaseelan guidelines. Although the new expert report is not specifically mentioned they noted that there had been expert reports before the previous judge, dealt in detail with the new evidence personal to the appellant, that is now produced to support the claim but concluded that they reinforced the view that the appellant was a person of no credibility. There is no error of law.

4. With respect to the Section 72 certification the grounds are a disagreement. The FTT fully explained why they considered that the appellant had not rebutted the Secretary of State’s position that the appellant remained a risk to the community.”

19. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

20. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.

21. At [5] in his decision, the First-tier Judge stated that the appellant had produced a documents bundle in 5 parts running to 480 pages, including ‘a number of expert reports and background and objective evidence, with other documents as listed’ and in addition, 4 appendices containing documents relating to discrete aspects of his claim. Ms Pinder, who appeared below as well as today, had produced a skeleton argument. The judge stated in terms that he had read and considered all of the documents, ‘although it is not necessary to refer to them all individually in this determination’.

22. The majority of the complaints made in the grounds of appeal are simply disagreements with findings of fact and credibility which were open to the

First-tier Tribunal on the evidence, particularly having regard to the decision of First-tier Judge Pickup as a *Devaseelan* starting point.

23. Two points require more detailed consideration: first, the country report of Ms O'Reilly, and second, the evidence regarding the appellant's contact with his son.
24. It is right that there is no detailed analysis of Ms O'Reilly's report. Her report found the appellant's account (as put forward on his behalf by his solicitors) to be plausible in the context of the timeline of events in Uganda. It is to be noted that she was not told of his claim to have joined the FDC 5 years before it was formed. Her report is based on the appellant's claim as advanced and on his witness statements which were treated as credible. Her evidence is in the nature of a rebuttal of the First-tier Judge's findings. In particular, it treats as reliable documents regarding the appellant's claimed involvement with Radio Katwe which Judge Pickup had found to be totally unreliable. I do not consider it likely that if the evidence of Ms O'Reilly had been examined in detail it would have taken the analysis of the appellant's case much further.
25. The appellant had advanced various inconsistent accounts, not all of which could be true. I remind myself of the guidance in *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. The weight to be given to expert evidence is pre-eminently a matter for the fact-finding judge in the First-tier Tribunal. An appellate court or Tribunal 'should not interfere with the trial judge's conclusions on primary fact unless it is satisfied that he was plainly wrong...What matters is whether the decision under appeal is one that no reasonable judge could have reached'.
26. At 2(iii), Lewison LJ said this:

"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. "
27. The evidence regarding the appellant's son was sparse. While concluding that a genuine and subsisting relationship had been established, the judge noted that there was no evidence about the appellant's son's likely reaction to his deportation and that the contact between the two was still limited by distance. The appellant lives in London where he is entirely supported and accommodated by his sister. He has not arranged to live nearer his son and his former partner remains cautious in relation to him, ensuring that she does not let him out of her sight with her son. The judge was entitled to conclude that the relationship between the appellant and his son was not such as to bring his circumstances within any of the Exceptions in section 117C.

Conclusions

28. Having reviewed the evidence before the First-tier Judge and his treatment of it, I am not satisfied that the grounds of appeal establish 'compelling reason' to consider that he overlooked the evidence of Ms O'Reilly, or any other evidence or argument before him, nor that the conclusions which he reached were not open to him on the totality of the evidence, having proper regard as he did to the findings of First-tier Judge Pickup and to the *Devaseelan* starting point that they provided.
29. The assertion that the First-tier Judge failed to have proper regard to the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance does not avail him. It does not appear that this argument was advanced before the First-tier Tribunal or that any particular adjustment or consideration was sought.
30. The First-tier Judge's decision was open to him and the reasoning at [15]-[30] was proper, intelligible and adequate to support his conclusions. I decline to interfere with it.

Notice of Decision

31. 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.

Judith A J C Gleeson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 2 May 2023