



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000434

First-tier Tribunal No: RP/50017/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 13th of October 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SB

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Young, a Senior Home Office Presented Officer

For the Respondent: Ms Wilkins instructed by Paragon Law Solicitors.

Heard at Phoenix House (Bradford) on 18 August 2023

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. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Cox ('the Judge'), promulgated following a hearing at Bradford on 14 December 2022, in which the Judge allowed SB's appeal against the decision to revoke his refugee status.

2. SB is a citizen of Iran born on 11 November 1989. On 7 February 2008 he was granted refugee status and limited leave to remain in the United Kingdom until 7 February 2013. On 10 April 2013 he was granted indefinite leave to remain.
3. On 6 February 2020 SB was issued with a decision to deport him from the UK following his conviction at Leeds Crown Court for which he was sentenced to 41 months imprisonment.
4. On 13 September 2021 SB was issued with a Notice of Intention to revoke his refugee status in response to which representations were made by his legal representative. The UNHCR were notified of the position who made written comments in a response dated 8 February 2022. On 23 February 2022 the Secretary of State decided to revoke SB's refugee status.
5. The Secretary of State's application for permission to appeal the Judge's decision was refused by another judge of the First-tier Tribunal but granted by Upper Tribunal Judge Macleman following a renewed application, the operative part of the grant being in the following terms:
 2. The grounds, as clarified in this further application, show that the FtT arguably overlooked to decide whether the appellant was entitled to protection on article 3 grounds only, or on grounds of refugee status.
 3. On whether the appellant's crime was "particularly serious", the FtT found that finely balanced, and the grounds may be no more than disagreement.
 4. In any event, the FtT treated "danger to the community" as an alternative basis for the decision, the grounds on which may be no more than disagreement on another question of fact and degree which might have been resolved either way.
 5. I do not restrict the grant of permission, but the SSHD may wish to consider which points are worth pursuing.

Discussion and analysis

6. The Secretary of State accepted in her grounds seeking permission to appeal that she could not deport SB to Iran due to a potential breach of his rights under Article 3 ECHR in any event.
7. Ms Young accepted she was in some difficulty in challenging the Judge's finding in relation to section 72 of the Nationality, Immigration and Asylum Act 2002 which the Judge deals with from [17] of the decision under challenge.
8. Section 72 creates a rebuttable presumption that an individual has committed a particularly serious crime and presents a danger to the community (my emphasis). The Judge finds that the answer to the first question, whether SB had committed a particularly serious crime was finely balanced. The Judge agrees with the Crown Court Judge's sentencing remarks demonstrating SB played a significant role and that his criminal conduct was sophisticated and involved planning, but finds although the offence is serious, given the maximum sentence is relatively low and the index offence can be categorised as falling within 4B or 4C, that he was not satisfied SB had committed a 'particularly serious crime'.
9. The grounds assert there is no legal basis for such a finding. It is argued in the grounds that although SB received a sentence of 41 months imprisonment the fact the maximum possible sentence was not imposed does not mean that the offence was not particularly serious.
10. Whether the Judge erred in the assert assessment of whether the offence was a particularly serious crime and whether that was material depends upon of the second question.
11. The Judge considered the question of whether SB presents a danger to the community from [26]. The Judge notes the Secretary of State's position is that SB is someone who may well reoffend in the same way in the future [24 of the refusal letter]. The Judge makes specific reference in the determination to

submissions made on the Secretary of State's behalf during the course of the hearing.

12. The Judge clearly considered the evidence with the required degree of anxious scrutiny. Having done so the Judge at [32] finds SB does not currently present as a danger to the community. The Judge's reasons for this finding are set out between [33] and [45]. In that final paragraph the Judge writes:
 45. In conclusion, I am satisfied that I can treat the incident that gave rise to this serious offence, as an isolated incident that the Appellant has rebutted the presumption. Accordingly, the Respondent has not satisfied me that the Appellant constitutes a danger to the community.
13. The effect of this finding is that the Judge concluded that the decision under challenge breached the UK's obligation under the Refugee Convention as the appellant could not be excluded from the protection of the Convention.
14. I agree with Miss Wilkins submissions that the Judge's findings, which are clearly understandable and supported by adequate reasoning in relation to the exclusion point, are within the range of those reasonably opens the Judge on the evidence. Whilst it may be argued that the categorisation of SB's offending as not amounting to a particularly serious crime may be infected by legal error such challenge would not be material as the Judges clearly found that SB does not present a danger to the community. That, for the reasons provided by the Judge, has not been shown to be a finding outside the range of those reasonably opens the Judge on the evidence. Whilst the Secretary of State may disagree and seek alternative findings to allow her to revoke SB's refugee status, even though he is still entitled to remain in the UK pursuant to Article 3 ECHR, that in itself is not sufficient.

Notice of Decision

15. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 September 2023

