



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023- 002741

First Tier Number: RP/50071/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12 October 2023

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

Secretary of State for the Home Department

Appellant

and

A.G
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Heybroke, of Counsel

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

Heard at Field House on 13 September 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 for members of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a citizen of Libya born on 9 March 1981. However for the sake of convenience, I shall refer to the parties as they were referred to before the First Tier Tribunal. The appellant arrived in the United Kingdom on 10 October 2010 and was granted refugee status on 9 January 2014. On 22 November 2019 the appellant was convicted at Bournemouth Crown Court of 'wounding with intent to do grievous bodily harm' (GBH) and sentenced to 5 years and four months imprisonment.
2. The respondent revoked the appellant refugee status pursuant to paragraph 339 AC (ii) because she was satisfied that subsequent to the appellant obtaining refugee status, his conduct has been so serious that it warrants the revocation of his refugee status. The revocation was on the basis that the appellant was convicted by a final judgement of a particularly serious crime and he constitutes a danger to the community of the United Kingdom. Pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002. ("The 2002 Act)". The respondent issued a certificate stating that the presumptions under subsection 5 applies, namely that a person convicted of a particularly serious crimes constitutes a danger to the community unless this presumption is rebutted by the appellant.
3. First-tier Tribunal Judge Rae-Reeves allowed the appeal in a decision dated 14 April 2023 and stated that the appellant has rebutted the presumption, namely that he poses no risk to the community of the United Kingdom.
4. Permission to appeal to the respondent was granted by Judge Hatton of the First-tier on 20 July 2023 in the following terms;

In essence, the grounds assert the Judge arguably erred in finding at [26] that the Appellant rebutted the statutory presumption at section 72(5A) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") i.e. that he constitutes a danger to the community of the United Kingdom. I accept it is arguable the Judge erred in this regard, in particular, given the acknowledgment at [18] that the recent OASys assessment of 3 February 2023 concluded he remains at "medium" risk of committing further non-violent and violent offences, and "he is not demonstrating high levels of engagement as he seems reluctant to talk to his GP about the issues he is having with mental health", and the corresponding acknowledgment at [20] that the recent psychiatric report of 5 January 2023 confirms his risk of violence to others remains "significant". Given the hearing of 12 April 2023 took place within a couple of months of these conclusions, it is difficult to establish a sufficient evidential basis for departing from them. Correspondingly, it is at least arguable that the Appellant's history of violent offending, including assaulting emergency workers (which does not appear to have been acknowledged in the Judge's decision), forms an integral part of an assessment of propensity to reoffend. Permission is granted on all grounds.

5. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to decide if any such error was material and decision should be remade.

Submissions - Error of Law

6. In the grounds of appeal it is argued for the respondent as follows. There are material errors of law in the decision of the First-tier Tribunal. The singular issue before the First-Tier Tribunal was whether the appellant has rebutted the statutory presumption under section 72 of the 2002 Act that he constitutes a danger to the community as he has been convicted in a final judgement and sentenced to five years four months imprisonment, which is a particularly serious crime. The sentencing remarks dated 22 November 2019 details the appellant's crime, in that he stabbed a man in the chest with a knife, which he had taken with him, and the injury was a serious injury. The appellant's probability of non-violent offending and probability of violent offending was categorised as medium. The report of Dr Dass a consultant psychiatrist dated 5 January 2023 stated that the appellant's risk of violence to others remains significant due to his offending history and convictions. In this context, should the appellant's mood, mental health, financial and social circumstances deteriorate and any lapses into drug use and alcohol, the risk of violence to others would be significant.
7. The judge has given inadequate reasons and or there is a perversity for his failure to take into account material matters. The judge's conclusion that the appellant had rebutted the presumption that he is not a danger to the community for the purposes of section 72 is perverse and/or inadequately reasoned. You are you The judge has had no regard to the management of the appellant's risk within the community as set out in the 2023 OASys report at page 11. It is submitted that such management informs the appellant's opportunity to commit further offences whilst also managing the risk factors underpinning the appellant's offending such as substance abuse which was recognised as a risk factor along with mental health, lack of income and homelessness.
8. The SSHD relies upon **Restivo [2016] UKUT 00449**, which recognised the inherent distinction between a risk that is managed and whether or not the risk actually exists, ".....the fact that such threat is managed while that person serves his or her prison sentence is not itself material to the assessment of the threat he or she poses. The threat exists, whether or not it cannot generate further offending simply because the person concerned, being imprisoned, has significantly less opportunity to commit further criminal offences."

9. It is self evident that the judge's basis for finding the appellant is not a danger to the community is predicated upon the appellant having undertaken courses, having stopped his drug use and engaging with support services. The judge has failed to have regard to the substance of the appellant's licence and does not take into account the fact that the appellant had no choice other than to comply with this licence requirements. It is submitted that the appellant's engagement with probation and support services, are same agencies who still found the appellant to be a significant and high risk to the community. The judge has failed to explain why the risk analysis is to be disregarded when the very agencies who providing the risk assessments are the agencies with whom the appellant is engaged and are therefore completely aware of the appellant's engagement when assessing risk. The psychiatrist report and the OASys report are dated within only three months prior to the First-tier Tribunal hearing. There was no evidence of risk before the judge that pointed to recent evidence to undermine their assessments.
10. The Judge erred in his reliance upon the appellant's present courses when assessing risk in the community and its underlying causes. As reasoned in **HA [2020] EWCA Civ 1176** at paragraph 141, that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so, with any confidence if based on mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period.
11. It is therefore submitted in the light of the up to date evidence on risk and the failure of the judge to have regard to the full extent of appellant's violent offending and risk management in the community, the judge's findings are inadequately reasoned and/or perverse.
12. At the hearing both parties made submissions.

Error of Law Decsion

13. The Judge correctly identified the issue in the appeal to be resolved was whether the appellant has rebutted the statutory presumption that he is a risk to the community of the United Kingdom as he has committed a particularly serious crime as he was sentenced to 5 years 4 months imprisonment. At paragraph 11, the judge stated that the appellant was found guilty of a particularly serious crime of stabbing someone in the chest which the sentencing judge found to be premeditated. The judge was aware that the appellant has already been found guilty of offences of possession of cannabis before his trial for GBH which predate his imprisonment. The judge clearly understood the full extent of the appellant's criminality.

14. The judge at paragraph 12 noted that both parties rely on the sentencing judge's comments because it has both negative and positive characteristics. The sentencing judge found the appellant to be a high risk of serious harm but only if he is released into the community *within the short term*. (our emphasis) The judge found that as the appellant was sentenced to 5 years imprisonment and considered this to be a relatively positive point for the appellant as he has not re-offended since he committed the assault, which was a long period of time.
15. The judge accepted the analysis of the psychiatrist, Dr Dass that the appellant's risk of re-offending, is related to his reliance on alcohol and drugs and that the crime of GBH was committed while he was intoxicated on drink and drugs. The judge accepted that the appellant has a settled, managed treatment regime with which he is compliant.
16. The judge found the OASys assessment dated 3 February 2023 contradictory. The judge stated that although the appellant "has been assessed as high risk to the public but it also concludes that the appellant "is quite motivated to address his offending behaviour". The judge was persuaded about the appellant's rehabilitation because he has undertaken courses, including one which is about dependence on alcohol and a drug awareness rehabilitation course and received a certificate of achievement in May 2021. The judge found that this demonstrates the appellant's insight into his main cause of his offending, which was alcohol and drugs which the psychiatrist stated causes his offending to the public.
17. The judge accepted the evidence that the appellant has overcome his dependence on alcohol and drugs which led to his criminality. The judge considered the psychiatrist report dated 5 January 2023 which stated that the appellant has a reasonable amount of insight and has abstained from using drugs and alcohol since his release from prison and has engaged with his probation officer and has the support of the well-being team to maintain his abstinence. The judge accepted the evidence that since leaving prison, the appellant has engaged with the care plan suggested by the psychiatrist which includes increasing medication attending cognitive behaviour therapy and other psychiatrist support provided by his probation officer. Therefore the weight to be given to each piece of evidence and cumulatively, was a matter for the Judge.
18. The judge carried out a forward-looking assessment and was satisfied that because of the appellant's insight into his condition and the treatment that he is undergoing, (or about to undergo), the risk of harm to the community is curtailed. The forward-looking assessment is in line with UNHCR which states that for the "danger to the community" exception to the principle of non-refoulement under Article 33(2) of the

1951 Convention to apply, there must be an individualised finding that the refugee has been convicted of a particularly serious crime and that in a forward-looking assessment, he constitutes a danger to the community. The judge concluded given the appellant's insight into his offending and his support structure, the appellant does not constitute a danger to the community and allowed the appeal under the immigration rules.

19. The judge provided adequate reasons based on the evidence in support of the conclusion that the appellant has rebutted the presumption that he is a danger to the community for the purposes of s.72 of the 2002 Act. We find that we do not have a substantial doubt as to the reasoning of the judge or whether he in any way, erred in law by misunderstanding the law, some relevant policy or some other important matter or by his failure to reach a rational decision on relevant grounds. We find that the respondent has not satisfied us that she has genuinely been substantially prejudiced by the judge's failure to provide an adequately reasoned decision.
20. Therefore in that regard, it cannot be said that the judge's reasons are irrational, perverse, or unreasonable in the Wednesbury sense, or findings and conclusions that were wholly unsupported by the evidence. Although the respondent disagrees with this finding, we do not find it has been made out the judge's conclusions are outside of the range of those reasonably available to the Judge on the evidence. The judge applied the correct law and where this happens, and which results in an arguably unacceptable conclusion to the respondent, it does not mean that it was erroneous in law.
21. Although "error of law" is widely defined, the Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. Baroness Hale put it in this way in **AH (Sudan) v SSHD** at [30]: "Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."
22. There is no suggestion that the judge considered irrelevant matters. We find that the judge had regard to all relevant factors, including the sentencing report, the OASys report and the psychiatrist report and found that it was "a mixed bag". The weight to be attached to the evidence either individually or cumulatively, was a matter for the judge. The conclusion reached by the judge was based on the particular facts and circumstances of this appeal and the strength of the evidence before the Tribunal.

23. We find that no error of law has been established in the First-tier Tribunal's consideration of the circumstances, or in the conclusion that was ultimately drawn upon the consideration of those circumstances. Accordingly, we dismiss the respondent's appeal.

Decision

24. The making of the decision of the First-tier Tribunal did not involve a the making of an error on a point of law.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed by
Deputy Judge of the Upper Tribunal
S Chana

Dated this 25th day of September 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the

Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email