



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002159

First-tier Tribunal No: RP/50006/2021
LR/00056/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18th June 2024**

Before

**UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

**MZ (IRAN)
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Metzger, Counsel instructed by Harding Mitchell Solicitors
For the Respondent: Mr K. Ojo, Senior Home Office Presenting Officer

Heard at Field House on 24 May 2024

Anonymity Order confirmed

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the anonymity order is confirmed. We add that neither party applied for the order to be lifted and we consider that it is appropriate to maintain the order due to the asylum and international protection issues which the respondent accepts apply in this case.

No-one shall publish or reveal any information, including the name or address of the appellant or his family likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This decision is properly to be read in conjunction with the error of law decision issued by the Upper Tribunal Judge O'Callaghan and Deputy Upper Tribunal Judge Jarvis sent to the parties on 30 October 2023. This Tribunal set aside the decision of the First-tier Tribunal, dated 16 May 2023, by which First-tier Tribunal Judge Bunting allowed the appellant's appeal against a decision to revoke his refugee status.

Relevant background

2. The relevant background is detailed in our error of law decision from para. 4 onwards, but for the purposes of clarity we note the following:
 - a. The appellant and his wife entered the United Kingdom on 16 March 2016; eventually the appellant was granted five years leave to remain as a refugee from 15 December 2017.
 - b. On 26 October 2018, the appellant was one of a number of people (including his brothers X and Y) who were convicted of a conspiracy to fraudulently evade duty (amounting to £597,317) in relation to counterfeit cigarettes - the appellant was sentenced to 42 months imprisonment.
 - c. The respondent started proceedings to deport the appellant to Iran. The respondent subsequently conceded that the appellant's deportation would put the United Kingdom in breach of its obligations under the Refugee Convention but gave notice of the intention to revoke that status (on 6 March 2019).
 - d. On 25 January 2021, the respondent decided that the appellant should be excluded from the benefits of refugee status by reference to para. 339AC(ii) of the immigration rules (and from humanitarian protection leave under para. 339C(iv)); the respondent however accepted that the appellant would nonetheless face a real risk of serious harm on return (by reference to article 3 ECHR) and therefore granted the appellant 30 months discretionary leave.

The remaking proceedings

3. There is no dispute between the parties that the issue to be resolved by the Upper Tribunal on remaking is a narrow one: has the appellant rebutted the statutory presumption in s. 72(2) of the Nationality, Immigration and Asylum Act 2002 as then in force (as is applicable to this appeal due to the age of the conviction) that he constitutes a danger to the community?
4. We should add at this stage that Mr Metzger did not seek to argue that the appellant had not been convicted of a particularly serious crime. This is the correct approach bearing in mind that ss. 72(2)(a) & (b) expressly define such a crime as being: (a) a UK conviction and (b) involving a sentence of 24 months or more; both requirements are met in this case.

The remaking hearing

5. The appellant and his wife gave evidence to the Upper Tribunal via the Tribunal's Kurdish Sorani interpreter. There were no difficulties in understanding; they confirmed their witness statements and were cross-examined by Mr Ojo.

6. At the end of cross-examination, we heard submissions from both representatives of which we have kept our own note. In respect of the respondent's case, Mr Ojo essentially made the following submissions:
 - a. The OASys report was a relevant part of the evidence before the Tribunal but should not constitute a trump card in terms of its conclusions as to a low risk of proven reoffending/proven non-violent reoffending and proven violent-type reoffending, as well as a low risk of serious recidivism (see internal page 28 of the report completed on 15 December 2021, at page 93 of the Upper Tribunal's composite bundle).
 - b. The appellant had been vague about his insight into his offending despite saying that he was remorseful in his witness statement.
 - c. The Appellant had been inconsistent about how involved his brother Y was in the index offending: the appellant blamed his older brother X for leading him and Y into the criminal offending.
 - d. The appellant had not provided any evidence from his brothers to dispel the risk of an adverse influence from them.
7. In response, Mr Metzger made the following arguments with reliance upon his helpful skeleton argument dated 16 May 2024:
 - a. The evidence within the social worker's report indicated that the appellant had been acting responsibly as a father since his release from prison.
 - b. This improved behaviour as a father was consistent with the appellant's time in prison acting as a salutary lesson to him about the consequences of further bad behaviour.
 - c. The appellant's conduct should be viewed through the prism of the fact that he was released from prison on licence in June 2020. His sentence expired in April 2022 and he had not reoffended for almost 4 years, 2 of which were post-licence.
 - d. Whilst it was true to say that the appellant had not pleaded guilty before or during his criminal trial, there may be a number of reasons why this is the case.
 - e. Although the appellant's oral evidence about his own culpability appeared, on the face of it, inconsistent (the appellant told the Tribunal that he accepted that he had carried out criminal activity but also said that his brother (X) was responsible for his actions) this was consistent with the appellant effectively coming to terms with his own behaviour but still blaming his brother for leading him into the criminal activity itself.
 - f. X's role as a "prime mover" in the extremely organised fraud conspiracy was clearly evidenced in the papers before the Upper Tribunal. We note at this stage that the judge's sentencing remarks clearly indicate that X (and another man) were the principals involved in the conspiracy: X was involved in Teeside, arranged the purchase of the products and recruited others including his brothers.
 - g. The appellant's evidence about the very minimal contact with his brother X and limited contact with his brother Y was given honestly and that a full

breaking off of a relationship with his brother X would be very difficult under the family circumstances.

8. Overall Mr Metzger asserted that the appellant had done enough to rebut the statutory presumption.

Findings and reasons

9. As we have already laid out, the Upper Tribunal's task is to determine whether the appellant has successfully rebutted the statutory presumption that he constitutes a danger to the community on the basis that he committed a particularly serious crime.

The appellant's involvement

10. We start by reminding ourselves that the appellant's role in the conspiracy to defraud the HMRC of relevant duty was not a minimal one: this is reflected in the fact that the appellant received a substantial sentence of 42 months imprisonment. In his sentencing remarks HHJ Bourne-Arton QC explained that the appellant was an essential part of the conspiracy.
11. The sentencing judge went on to observe that the appellant collected, unloaded, distributed and transported cigarettes and did so with the full knowledge of what he was involved in particularly after 6 August when he knew the quantity of cigarettes involved. The appellant's evidence in the trial that he did not have any knowledge of what was going on and that he merely relied on what he was being told by his brother Y was "fanciful and dishonest". The appellant also lied in claiming that he would not have received any benefit from the offences.
12. We therefore take very seriously the appellant's criminal behaviour and his dishonesty during the trial which are clearly indicative of bad character and a proclivity to lie.

The appellant's behaviour since his release on 12 June 2020

13. We find however that there is no evidence that the appellant has committed any further offences since his release from prison on 12 June 2020 which is a period of nearly 4 years; we also similarly note that the appellant has not committed any offences since the end of his period of licence which expired in April 2022.

The OASys report

14. As we have noted, the OASys report is dated 8 March 2022 but was completed on 15 December 2021. The report predicts a low risk of relevant forms of reoffending and serious recidivism.
15. Both sides relied upon the conclusions in this report during their submissions and we of course note that it is an expert report which must be given careful consideration; we also record that Mr Ojo did not challenge the way in which the report was compiled or indeed the conclusions reached.
16. We note that the low risk described in the report is not intended to be, nor should it be taken to be, equivalent to the risk thresholds to be deployed by this Tribunal. Ultimately, we have borne in mind that one must keep in mind the seriousness of the potential reoffending even in cases where the risk is said to be low as part of the overall assessment of danger to the community.

The appellant's involvement with his family

17. Mr Ojo did not challenge the approach or conclusions reached by the independent social working team at Social Workers Without Borders who provided a report dated 16 January 2022.
18. The report is therefore uncontested and records that the appellant's wife suffers from severe and debilitating migraines which can last for several days rendering her unable to leave the house, undertake household activities such as preparing meals or playing with the children. The appellant's wife also suffers from a problem with a muscle in her hand which causes ongoing pain and therefore she also requires additional support from the appellant in managing household tasks including cleaning and cooking.
19. During the time that the appellant was in prison, his wife and children found life very difficult and the appellant's wife relied heavily on support from her brother-in-law and a close friend.
20. Since his release from prison, the appellant has taken the main role in parenting including taking the children to school in the morning and collecting them later in the day.
21. The appellant and his wife have a strong relationship as partners and as co-parents and are able to provide their children with a strong sense of security and emotional warmth, thereby providing a stable foundation for the children.
22. The children seemed confident, happy and secure and were observed to have strong bonds with each of their parents. Overall, the appellant and his wife were providing high quality parenting and strong values to their children despite the appellant's wife's ill-health.
23. This report is therefore an important part of the overall evidential picture of which we have given careful consideration and weight. There is no particular explanation before us as to why there has not been an updating report bearing in mind the relative age of this document but nonetheless it is evidence which we have taken into account and given some weight.

The appellant's insight into his offending

24. There is some force in the respondent's criticism of the appellant's evidence during the hearing in respect of his criminal offending. It was clear enough that the appellant both said that he accepted that he had acted in a criminal way but also attributed responsibility to his brother X.
25. We have considered this part of the evidence with real care bearing in mind its importance to the question of the risk presented by this particular appellant. Overall, we are prepared to accept Mr Metzger's well-made submission that the imperfect nature of the appellant's response was more a sign of positive credibility than of adverse credibility. We therefore accept that the appellant does recognise that he was involved in serious criminal behaviour but that he still harbours anger at his older brother X for effectively leading him into the criminal operation itself.
26. In deciding this, we have also assessed the superficial difficulty in the appellant's evidence in respect of his brother's (Y's) involvement in the criminality as well. During his oral evidence, the appellant seemed to downplay Y's involvement in the operation despite the judicial sentencing remarks concluding that Y was

significantly trusted by his brother X and could be considered to have been X's "right-hand man".

27. We have also noted the tactic used by the family members during the criminal trial itself of blaming each other. The sentencing judge was in fact driven to state that *"[Y] and [X] have played games with this court in this sense, in order for [X] to get out of it he blamed you. Now that he's been caught out, you're blaming him. The truth of the matter is you both were equally responsible and both equally knew what was going on."*
28. This aspect of the appeal before us has caused us some concern but we note that the sentencing judge's remarks were directed at the appellant's brothers, and after a careful consideration of all of the evidence, we have reached the conclusion that the appellant is a relatively unsophisticated and naïve person who has been manipulated into criminal activity by both brothers relatively shortly after coming to the UK.
29. This is not to downplay the appellant's own part in the criminal conspiracy which has quite properly been identified and punished but to seek to assess the potential adverse consequences of the appellant's ongoing view that Y was also a victim of X's manipulation and the potential for the appellant to be further waylaid in the future.

The influence of the appellant's brothers upon him now

30. This is another important aspect of the evidential matrix before us. Mr Ojo submitted that the appellant provided insufficient evidence to establish his overall claim that he has little or no contact with X directly and reduced contact with Y.
31. We note the appellant's evidence about the level of contact he has with his elder brother changed during the course of oral evidence: initially he said that they do not have contact, then later he confirmed that the contact is limited.
32. Again, we accept to the requisite standard that the evolution of the oral evidence is less indicative of adverse credibility but more indicative of the appellant giving truthful evidence. We also note that the appellant's wife similarly initially said that the appellant does not have contact with X but later stated that he probably did have some contact with him due to their relationship as brothers.
33. We also conclude from the evidence before us that the appellant and his brothers have relocated to London since the offences and that Y and X both live in Collingwood and therefore not that far from the appellant who lives in Brent.
34. We have further borne in mind that both X and Y received longer sentences: Mr Ojo confirmed that X had received the longest sentence of five and half years imprisonment and therefore X's period of licence would have expired only relatively recently. This is also relevant to the extent that the Appellant's ability to ignore the influence of X has been really tested since 2020.
35. In totality the evidence before us is sufficient to show that the appellant has distanced himself from his older brother X since the criminal convictions and has limited his contact with his younger brother Y despite their relative geographical proximity. We find that this is materially important evidence in showing that the appellant has, so far, removed himself from the adverse influence of his siblings.

Conclusion

36. Overall then, we have concluded that the totality of the evidence is sufficient, taking into account the length of time since the appellant was released from prison (and also completed his licence period), added to the unchallenged social worker's report which indicates his significance within the family unit in 2022 and our positive credibility findings in respect of his evidence about his personal insight and his attempts to alter the level of contact with his brothers, to rebut the statutory presumption that the appellant remains a danger to the community.
37. We should add however that the appellant must be aware that any future criminal conduct will very likely lead to the respondent seeking to take further action against him including seeking to revoke his refugee status.

Notice of Decision

38. The appellant's appeal against the respondent's decision to revoke his refugee status under s. 72 of the 2002 Act is allowed.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 June 2024