



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-003662

First-tier Tribunal No: RP/50025/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 07 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AM**

**(Anonymity Order made)**

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr R Spurling, instructed by Shervins Solicitors

**Heard at Field House on 4 November 2024**

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal which allowed AM's appeal against the respondent's decision to revoke his refugee status.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and AM as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Eritrea, born on 2 February 1998. He entered the UK on 7 August 2009 together with his sister MM with a family reunion entry visa to join

their mother, AH, who had previously been granted refugee status in the UK. The appellant was granted indefinite leave to remain in the UK on 19 February 2013.

4. On 6 March 2019 the appellant was convicted of possession with intent to supply a controlled drug of Class A - Crack Cocaine and possession with intent to supply a controlled drug of Class A - Heroin. On 8 March 2019 he was convicted of possession with intent to supply a controlled drug of Class A - Cocaine and possession with intent to supply a controlled drug of Class A - Heroin. On 23 April 2019 he was sentenced to three years and four months imprisonment for each offence, to be served concurrently.

5. On 14 May 2019, the appellant was served with a decision to make a deportation order pursuant to the Immigration Act 1971 and the UK Borders Act 2007, which included a section 72 warning. He did not respond. On 13 October 2000 the appellant was informed of the intention to revoke his refugee status and he was invited to seek to rebut the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) that he had been convicted of a particularly serious crime and constituted a danger to the community. He did not respond. In a letter of 28 October 2020, the United Nations High Commissioner for Refugees (UNHCR) was informed of the intention to revoke the appellant's refugee status. The UNHCR responded in a letter dated 18 December 2020.

6. On 24 March 2021 a decision was made to revoke the appellant's refugee status. The respondent considered that the appellant's conduct was so serious that it warranted the revocation of his refugee status. The respondent had regard to the sentencing remarks of the Crown Court Judge when he was sentenced and considered that the appellant had been convicted of a particularly serious crime and that he constituted a danger to the community. The respondent certified that the presumption in section 72(2) of the NIAA 2002 applied to the appellant and that Article 33(2) of the Refugee Convention applied such that his removal would not breach the Refugee Convention. The respondent also considered that the appellant was excluded from a grant of humanitarian protection under paragraph 339D(iii)/(iv). The respondent confirmed, however, that the appellant's removal to Eritrea was not currently being considered as he remained at risk of persecution in that country and to remove him could therefore potentially breach his rights under Article 3 of the ECHR. It was considered that the appellant's refugee status could nevertheless be revoked under paragraph 339AC(ii) and his refugee leave could be replaced with a shorter period of leave with more restrictive conditions imposed.

7. The appellant was released from prison on 20 November 2020. However he was sectioned under the Mental Health Act 1983 in December 2020 and was admitted to Goodmayes Hospital. He remained in hospital for two weeks and put on medication. He had a relapse in July 2022 and was hospitalised for 10 days. He was referred to Havering Early Intervention in Psychosis on 3 February 2021. The appellant was reviewed by Dr Dina Farraj, Acting up Consultant Psychiatrist in Havering Community Recovery Team/ Havering Early Intervention in Psychosis on 3 February 2023 upon instructions from his solicitor for the preparation of a psychiatric report. On 13 March 2023 the appellant was reviewed by a Consultant Psychiatrist following concerns about the deterioration in his mental health. On 10 March 2023 the appellant was referred to court Liaison Diversion Assessment Team because of common assault when he slapped his mother. Dr Farraj prepared a report for the appellant's solicitors on 17 March 2023. On 16 January 2024, following a psychotic episode, the appellant was sectioned again and taken to hospital. He was discharged on 12 February 2024 and left the hospital on 15 February 2024. On 23 February 2024 Dr Farraj prepared a

second psychiatric report for the appellant's solicitors, after reviewing him on 22 February 2024 whilst he was under the care of the Home Treatment Team.

8. Following a number of case management review hearings, the appellant's appeal against the respondent's decision was heard on 14 April 2024 by First-tier Tribunal Judge Cohen. The appellant did not give oral evidence before the court as he was deemed unfit to do so by Dr Farraj. However his sister gave evidence. Judge Cohen found that the appellant was a very different individual to that at the time of the offending and that he had genuinely rehabilitated. He found that the presumption that the appellant's refugee status should automatically be revoked had been rebutted and that the certification was not in accordance with the facts or the law. The judge went on to find that the respondent had not engaged with the fundamental aspects of the basis upon which the appellant was granted refugee status in the UK, that the objective evidence indicated there had not been a fundamental and durable change in Eritrea and that the appellant would still be at risk based upon the factors which led to the respondent granting him refugee status upon arrival. He found the respondent's attempt to enforce the cessation provisions against the appellant's refugee status to be wrong in all the circumstances. He allowed the appeal in a decision promulgated on 6 July 2024.

9. Permission to appeal against that decision was sought by the respondent on two grounds. Firstly, that there was a material misdirection of law / perversity in the assessment of revocation, as the judge had materially erred by conflating revocation with the cessation principles adopted under paragraph 339A(v) Immigration Rules. Secondly, that the judge had failed to consider the psychiatrist's comments on risk of harm in her report of 23 February 2024.

10. Permission was granted in the First-tier Tribunal and the matter then came before me for a hearing.

### **Hearing and Submissions**

11. Both parties made submissions.

12. Mr Tufan submitted that the judge confused the revocation issues under section 72 and the cessation provisions which had not been part of the respondent's decision, and that that infected his overall decision. He submitted that the judge had failed to consider the references in the psychiatric reports to further offences aside from the index offence, including common assault, and it was not clear from his decision how the presumption in section 72 had been rebutted. The judge had failed properly to consider the issue of risk. There was a lack of proper analysis. The decision should be set aside.

13. Mr Spurling submitted that the judge had not erred in his decision. With regard to the first ground of challenge, the judge had not been confused as he was aware that revocation was the main issue and that the appellant was not going to be removed to Eritrea. He relied upon the decision in Essa (Revocation of protection status appeals) [2018] UKUT 244 in regard to the issues the judge properly considered. He submitted that even if the subsequent case of SM v Secretary of State for the Home Department [2024] UKUT 323 was considered, the judge did nothing more than make unnecessary findings on cessation, which did not vitiate his entire decision. Even if the judge was considered to have erred, the error was not material. As for the second ground, the judge did not have to recite all the evidence but he did sufficient to show that he had considered all the evidence and was aware of the contents of the psychiatric reports.

Mr Spurling submitted that there was a difference between potential harm and actual danger to the community and the judge was entitled to find that the evidence showed that the appellant was not a danger to the community.

## Analysis

14. I do not agree with Mr Spurling that the judge made no error by considering the cessation provisions. In so far as he suggests that the decision in Esse supports the judge's consideration of cessation in addition to considering the presumption in section 72 and that there was therefore no confusion on the judge's part, it does not appear to me that it was the reasoning in Esse that led to the judge making the findings that he did at [34] and [35]. That is because of what he said at [35], namely that *"I find the respondent's attempt to enforce the cessation provisions against the appellant's refugee status to be wrong in all the circumstances"*, which was clearly erroneous given that the respondent had never attempted to enforce the cessation provisions against the appellant's refugee status. On the contrary, the respondent made it clear that she was not going to do so and indeed the judge acknowledged that throughout his decision. In any event, as Mr Spurling himself accepted, the decision in SM made it clear that the apparent contradiction referred to in Esse no longer arose given that a decision to revoke leave to remain as a refugee post-EU exit was an act done under domestic law, under paragraph 338A of the immigration rules and was no longer a decision giving effect to Article 14 of the Qualification Directive. In the circumstances it is difficult to understand why the judge made the findings that he did at [34] and [35] and he clearly erred by doing so.

15. However I do not consider that the error is material and I do not agree with the respondent that the judge's findings at [35] in relation to the cessation provisions affected, infected or impinged upon his findings on the presumption in section 72. The judge could have ended his decision at [32] where he found that the presumption in section 72(5) and (6) had been rebutted. His findings leading to the conclusion in [32] were all relevant to the issue of the presumption under section 72 and did not involve any consideration of the cessation provisions or the basis of the grant of refugee status. The effect of the judge's conclusion at [32] was that paragraph 338A, with reference to paragraph 339AC of the immigration rules, did not apply so as to enable the Secretary of State to revoke the appellant's grant of refugee status. That alone was sufficient to enable him to allow the appeal given that, as he observed throughout, the respondent was not seeking to remove the appellant to Eritrea.

16. As for the respondent's challenge to the judge's finding on section 72 in the second ground, it is asserted that the judge failed to consider the psychiatrist's comments on risk of harm in her second report of 23 February 2024. The grounds refer to two particular sections of Dr Farraj's report where she noted, at page 23 of the appeal bundle, that there needed to be an evaluation of the appellant's risk of harm to others, given the planned relocation outside of the family home, which potentially increased the risk of impulsive or aggressive behaviour and, at page 24, that the risk to others was categorised as low to medium. It is relevant to note, as Mr Spurling submitted, that in that section Dr Farraj was referring in particular to the appellant's history of property damage and not to his drugs offending. In any event, the judge was not required to cite every part of the report when it was otherwise apparent that he had given both psychiatric reports full consideration, and that he had considered the reports together with the other evidence before him including the evidence from the appellant's sister. The judge was fully aware of the appellant's offending history and took that into account, accepting that the index offence was a serious one. However he listed various factors at [26] which, together with his findings at [27] and

[28], including references to Dr Farraj's reports, led to his conclusion that the appellant was unlikely to reoffend, that he was no longer a danger to the community and that he was rehabilitated. It may well be that a more detailed analysis would have assisted, but it seems to me that there is sufficient reasoning in the judge's decision to show that he engaged with the relevant evidence and to understand why he reached the conclusion that he did. The respondent may disagree with the judge's decision in that respect, but it cannot be said that the judge materially erred in law in concluding as he did.

17. For all these reasons I do not find the Secretary of State's grounds to be made out and I conclude that the judge's decision should stand. I accordingly uphold the judge's decision.

**Notice of Decision**

18. The Secretary of State's appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to allow the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

5 November 2024