



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/10696/2009

THE IMMIGRATION ACTS

**Heard at Field House
On 26 September 2013**

**Determination
Promulgated
On 01 October 2013**
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Before

**UPPER TRIBUNAL JUDGE MACLEMAN
UPPER TRIBUNAL JUDGE PITT**

Between

**PF
(Anonymity Order Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Armstrong, instructed by Fadiga & Co
For the Respondent: Ms Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is an Angolan citizen. He was born on 2 March 1983.

2. It has already been found that the appellant is entitled to Article 3 protection on the grounds of his mental health, that matter having been decided by Upper Tribunal Judge Latta in a determination dated 8 March 2011.
3. However, the appellant also maintains that he is entitled to protection under Article (15)(b) of the Qualification Directive (QD) and qualifies for a grant of humanitarian protection (HP).
4. In a determination dated 26 June 2012, Upper Tribunal Judge Eshun found that the appellant was excluded from HP and also did not make out a substantive claim for HP. In a Consent Order dated 4 June 2013 the challenge to Judge Eshun's decision to the Court of Appeal was allowed and the matter remitted to the Upper Tribunal to re-decide the issues of exclusion from and entitlement to HP. Thus the matter came before us.
5. There are two outstanding issues that we are required to resolve. The first is whether the appellant is excluded from HP on account of having committed "a serious crime". The second is whether he qualifies for HP at all.
6. The terms of the Consent Order dated 4 June 2013 and Statement of Reasons attached thereto were somewhat opaque as to the latter issue being before us. However, the grounds of appeal to the Court of Appeal challenged Judge Eshun's findings on the appellant's HO claim. Also, there would have been no purpose in the remittal from the Court of Appeal had the issue of the appellant's substantive qualification for HP not been at large as well as the exclusion issue. Ms Holmes agreed with Mr Armstrong that the question of whether the appellant qualified for HP was before us.

Exclusion from Humanitarian Protection

7. Article 15 of the Qualification Directive states:

Article 15

Serious harm

Serious harm consists of:

...

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin ... "

8. Article 17 of the QD states:

Article 17

Exclusion

1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

...
(b) he or she has committed a serious crime... “

9. These provisions are incorporated into domestic law in HC 395 (the Immigration Rules) at paragraphs 339C and 339D, thus:

Grant of humanitarian protection

339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

(i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;

(ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;

(iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and

(iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

...

(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return... .

Exclusion from humanitarian protection

339D. A person is excluded from a grant of humanitarian protection under paragraph 339C (iv) where the Secretary of State is satisfied that:

(i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes ... “

10. This appellant has a conviction for possessing a false instrument and attempting to obtain services by deception for which he received a sentence of 12 months imprisonment. The circumstances were that he was a 20 year old failed asylum seeker, knew he had no right to work but obtained a false passport in order to open a bank account so as to have documents that would allow him to work.
11. The sentencing judge was concerned about the appellant's emotional health and directing that the Youth Offenders Institution to which he was sent be notified that he posed a high risk of self-harm. It was not disputed

that the features observed by the sentencing judge were signs of what was later diagnosed as complex PTSD and paranoid schizophrenia. It is not disputed that Upper Tribunal Judge Latta correctly identified that the appellant's fear of return to Angola (which led him to try to remain in the UK and work illegally) was a genuine subjective fear, essentially an unremitting psychotic feature of the appellant's mental illness.

12. The definition of what constitutes a "serious" crime for the purposes of exclusion from HP was settled in the cases of R (Mayaya) v SSHD, C4/2011/3273, on appeal from [2011] 3088 (Admin), [2012] 1 All ER 1491 and AH (Algeria) v SSHD [2012] EWCA Civ 395. Those cases confirm that the mere fact of a 12 month sentence cannot amount to a "serious" crime for the purposes of exclusion from HP.
13. In the light of the guidance in R (Mayaya) v SSHD and AH (Algeria), the respondent reissued her Humanitarian Protection Policy on 15 May 2013. The correct approach to the assessment of exclusion from HP is set out as follows:

" 5.1 Exclusion criteria

- A person will not be eligible for a grant of Humanitarian Protection if he is excluded from it because one of the following provisions in paragraph 339D of the Immigration Rules apply:

(i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;

...

- This is to be interpreted in a manner consistent with the policy on Exclusion under Article 1F of the Refugee Convention. A "serious crime" for the purpose of exclusion from Humanitarian Protection was previously interpreted to mean one for which a custodial sentence of at least twelve months had been imposed in the United Kingdom, but *it is now accepted that a 12 month sentence (or more) should not alone determine the seriousness of the offence for exclusion purposes.*

- In the Court of Appeal's judgment in AH (Algeria) v Secretary of State for the Home Department [2012] EWCA Civ 395, Lord Justice Ward noted (paragraph 54) that "Sentence is, of course, a material factor but it is not a benchmark. In deciding whether the crime is serious enough to justify his loss of protection, *the Tribunal must take all facts and matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed.*"

- *The sentence must therefore be considered together with the nature of the crime, the actual harm inflicted, and whether most jurisdictions would consider it a serious crime.* Examples of "serious" crimes include *murder, rape, arson, and armed robbery.* Other offences which might be regarded as "serious" include those which are accompanied by the *use of deadly weapons,*

involve serious injury to persons, or if there is evidence of serious habitual criminal conduct. Other crimes, though not accompanied by violence, such as large-scale fraud, may also be regarded as “serious” for the purposes of exclusion. (our emphasis)”

14. We have set out above the circumstances of the offence that gave rise to the appellant’s 12 month conviction above. It will be obvious that the nature of the offence is not analogous to those that must now be considered as “serious” such as “murder, rape, arson and armed robbery”. There are the additional mitigating features of his relatively young age and incipient mental illness. Ms Holmes did not seek to argue otherwise on these matters.
15. We find that the appellant has not committed a “serious” crime such that he is excluded from HP. We therefore proceed to assess whether he has a substantive claim for HP.

Humanitarian Protection

16. Mr Armstrong formulated the appellant’s claim to HP thus. The appellant comes within Article 15(b) of the QD and paragraph 339C (iii) of the Immigration Rules because substantial grounds have been shown for believing that, if he returned to Angola, he would face a real risk of suffering serious harm in the form of “torture or inhuman or degrading treatment or punishment”.
17. It was submitted that the appellant can show this to be so for three reasons:
 - (a) the accepted risk of serious harm arising in the UK by way of a very high risk of suicide if deportation were to proceed will persist on return to Angola.
 - (b) (i) a notable feature of the appellant’s paranoid psychosis is that his symptoms increase when he is confronted by those who seek to constrain or detain him, even for his own good; see the incidents at [13] and [14] of the appellant’s supplementary bundle (AB2) in which the presence of police led to an acute exacerbation of the appellant’s subjective fear of harm. Mr Armstrong also referred us to the oral evidence of a mental health social worker recorded at [13] of the determination of Judge Latta. The appellant had become psychotic and climbed into a tree in response to hearing “spirits”. When the police came he resisted violently and bit one of the police officers. The appellant’s reaction to the presence of police was “not just a response to people in uniform but he saw it as a threat to his life”.
 - (ii) the appellant’s return to Angola will inevitably involve exposure to officials and people in uniform. The 2012 US State Department Human Rights Report on Angola indicates at page 34 of AB2 indicates that:

“Police and immigration officials at border checkpoints extorted money from travellers and harassed returning Angolan refugees as well as migrants and refugees from other countries.”

The appellant will inevitably have to deal with officials in uniform on return and they will be looking to exploit him rather than assist him. It follows that the undisputed risk of serious harm arising in the UK by way of a high risk of suicide if deportation were to proceed will not only continue but be exacerbated on return to Angola in these circumstances.

- (c) In addition to the country evidence on extortion regularly practiced on returnees by officials at the border, pages 31 and 33 of AB2 confirmed longstanding evidence that official corruption, beatings during arbitrary detention were “repeatedly” committed by police and other security forces in Angola.

The appellant’s bizarre and violent behaviour that would inevitably arise on deportation, additionally so when confronted with corrupt officials in uniform looking to extort money from him, meant that there were substantial grounds for believing that he would suffer mistreatment by way of beatings, arbitrary detention and possibly torture.

At that point, his case was longer a “medical” case but a more standard one of the appellant being subjected to inhuman and degrading treatment or punishment directly by the Angolan authorities.

18. We were grateful to Ms Holmes for her indication that the respondent did not seek to resist any of these arguments. It was our view that the appellant’s presentation as a result of his mental illness places him at a real and very high risk of suicide in Angola if he is returned. We also found that someone with his presentation is very likely be subject to the widespread physical mistreatment at the hands of police and other security services that prevails in Angola.
19. It follows that it is our judgement that the appellant qualifies for humanitarian protection under paragraph 339C.

Decision

20. We remake the decision in the appeal by allowing it on Humanitarian Protection grounds.

Anonymity

Under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we

make an order for non-disclosure of the identity of the appellant in order to avoid the likelihood of serious harm to him arising from information about his health becoming known.

Signed: 
Upper Tribunal Judge Pitt

Date: 26 September 2013