Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01811/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 April and 16 June 2014	**On 19 June 2014**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SEROOK SAEED

Respondent

Representation:

For the Appellant: (For the hearing on 04/04/14) Mr G Saunders
(For the hearing on 16/06/14) Ms A Holmes
Senior Home Office Presenting Officers
For the Respondent: Mr A Mackenzie, Counsel, Instructed by Messrs Kesar & Co Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Appellant (hereinafter called the Secretary of State) against the decision of a First-tier Tribunal Panel comprising First-tier Tribunal Judge Colvin and Mrs L Schmitt JP – Non-Legal Member, who in a determination promulgated on 5 February 2014 allowed the appeal of the Respondent (hereinafter called the Claimant) a citizen of Iraq whose

date of birth is 21 January 1987 against the decision of the Secretary of State dated 12 July 2013 to refuse to grant to the Claimant asylum under paragraph 336 of HC 395 (as amended) and to make a deportation order by virtue of Section 32(5) of the UK Borders Act 2007.

2. In granting permission to appeal First-tier Tribunal Judge Parkes had inter alia this to say:

> "The Appellant was made the subject of a deportation order on the basis of his convictions including possession of a Class A drug with intent to supply, affray. His appeal was allowed by the Panel on the basis that he had been in the UK since he was 12 and that he has virtually no links to Iraq, the best interests of his children played a very limited role.
>
> The grounds argue that the Panel failed to give adequate reasons for their finding that he had rebutted the presumption that he is a danger under Section 72 given the assessments of the risk he presents. There were inadequate reasons given for the findings that he would be at risk in Iraq and in need of humanitarian protection. The findings on medical treatment were inadequate".

3. Thus the appeal initially came before me on 4 April 2014 when Mr Saunders opened his submissions by informing me that he no longer relied on the ground relating to the availability of medical treatment to the Claimant's (haemophiliac) in Iraq, as clearly the Panel attached little weight to it in allowing the Claimant's appeal and he was also mindful of what was said by Mr Mackenzie who prepared the Claimant's detailed Rule 24 response in particular at paragraph 18 in that regard.

4. Insofar as ground 1 was concerned, it had been pointed out by Mr Mackenzie in his Rule 24 response that that ground was misconceived because the requirements of Section 72(2) did not apply to the Claimant because he had never been sentenced to more than two years' imprisonment. Therefore, the only particularly relevant part of Section 72 that remained, was at sub-Section (4) that provided that a person would be presumed to have been convicted by a final judgment of a particularly serious crime to constitute a danger to the community of the UK, if he was convicted of an offence specified by order of the Secretary of State. Mr Mackenzie's response continued however that that order was held by the Court of Appeal in EN (Serbia) [2010] 2 B 633 to be ultra vires.

5. A query arose at that stage of the hearing, because most helpfully, Mr Mackenzie had produced the Court of Appeal decision of 13 July 2010 when, in considering the Claimant's appeal against the conviction of 14 July 2009, for possessing a Class A drug with intent to supply, it was decided to quash that decision and, at paragraph 13 of the Court judgment, Maurice Kay LJ had this to say:

> "What we shall do is substitute a conviction for simple possession of a Class A drug (cocaine). We shall not impose any penalty in relation to it at this stage in view of the time he has spent in custody. We are not going to give

> him time to consider a re-trial. We think a re-trial is inappropriate given the amount involved, the time spent in custody and the substituted conviction we have added. We make no order in relation to the money or the telephone" (Underlining added).

7. Mr Saunders expressed some confusion in relation to this decision because at paragraph 12(f) of the Secretary of State's letter of refusal the following was said:

> "On 13 July 2010 the Court of Appeal in considering the appeal against the conviction of 14 July 2009 substituted the verdict of 'possessing a Class A drug (cocaine) with intent to supply' with a verdict of 'Possessing a Class A drug (cocaine)' and sentenced you to 'no further penalty'. HMP Wandsworth advised on 20 July 2010 that you had been released on 13 July 2010 as your conviction was believed to be quashed. However, the Court of Appeal later clarified on 17 January 2013 that 'no further penalty' meant that the sentence of 42 months remained the same. Therefore your custodial sentence should have been completed and your liability to deportation considered at that time".

8. Mr Saunders was concerned, not least in light of the submissions raised in the Rule 24 response, to clarify exactly what was meant in that passage by the author of the refusal letter and in particular what decision the Court of Appeal of 17 January 2013 (if it existed at all and was not a mistake) referred to. Whilst appreciating that such a request in itself might not be sufficient for me to grant an adjournment request (Mr Mackenzie quite properly pointing out that this issue in itself was not the subject matter of the Secretary of State's grounds of appeal upon which permission was granted) Mr Saunders added there was a more particular reason why an adjournment was sought, namely; that following such investigation and after proper and fuller consideration of the matters raised in Mr Mackenzie's Rule 24 response, it might be the case that the Secretary of State would wish to carefully review her position as to whether in the circumstances she intended to continue to pursue to her appeal.

9. It was on that basis in the interests of justice that I decided that the adjournment request should be granted.

10. I was informed by Mr Saunders that should there be any change in mind on the part of the Secretary of State in the interim as to whether or not she intended to continue to pursue her appeal, both the Tribunal and the Claimant's legal representatives would be immediately informed.

11. At the outset of the resumed hearing before me on 16 June 2014 Ms Holmes, who now represented the Respondent, informed me as follows:

> "Having looked at the determination and looked at the grounds I am of the same view expressed by Mr Saunders that the grounds are not sustainable and I simply rely on the grounds and leave it at that".

12. In light of that most helpful clarification on the part of Ms Holmes, I did not trouble Mr Mackenzie to address me. In common with Ms Holmes and having read the determination in conjunction with a most helpful and detailed Rule 24 response prepared by Mr Mackenzie it is apparent to me that the panel's determination contained no misdirection of law and their fact-finding process cannot be criticised. I find there is nothing to suggest that the panel's conclusions drawn from that evidence were not reasonably open to them.

13. Mindful of the guidance of the Court of Appeal in R (Iran) [2005] EWCA Civ 982, I find that it cannot be said that the Panel's finding were irrational and/or Wednesbury unreasonable such as to amount to perversity. It cannot be said that they were inadequate. This is not a case where the Panel's reasoning was such that the Tribunal were unable to understand the thought processes that they employed in reaching their decision.

14. I find that the Panel properly identified and recorded the matters that they considered to be critical to their decision on the material issues raised before them in this appeal. The findings they made were clearly open to them on the evidence and thus sustainable in law.

Decision

15. The making of the previous decision involved the making of no error on a point of law and I order that it shall stand.

Signed Date 17 June 2014

Upper Tribunal Judge Goldstein