



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

Appeal Number: RP/00051/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 20 November 2018

**Decision & Reasons
Promulgated
On 10 January 2019**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**EW
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity Direction

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. Liberty to apply.

Representation:

For the Appellant: J Howard, instructed by Fountain Solicitors

For the Respondent: D. Mills, Senior Presenting Officer

DECISION AND REASONS

(Delivered Orally on 20 November 2018)

Introduction

1. The appellant is a citizen of Eritrea, born in January 1995. His father was granted refugee status in the United Kingdom in November 2004 and the appellant was granted entry clearance on 16 August 2006 pursuant to the refugee family reunion provisions. In April 2007, the appellant was granted indefinite leave to remain. It is accepted by the Secretary of State that the appellant was at that time recognised as a refugee in line with his father.
2. On 16 December 2013, the appellant was convicted at Leeds Crown Court of wounding with intent to do grievous bodily harm and was sentenced to 90 months' imprisonment. On 5 October 2017, the SSHD notified the appellant, and the UNHCR, of the intention to revoke the appellant's refugee status.
3. Although not relevant for the purposes of my decision, it is of note that the appellant is not at the hearing today because he is once again in detention as a consequence of his criminal actions, having further offended in January 2018, the details of which are not relevant.

SSHD's Decision

4. The decision which underpins this appeal is that made by the SSHD on 14 March 2018, headed: "*Decision to Revoke Refugee Status*". Therein the Secretary of State concluded: (i) that the appellant has been convicted of a particularly serious crime; (ii) that he is a danger to the community; and consequently, (iii) that his refugee status can be revoked pursuant to paragraph 339AC(ii) of the Immigration Rules. The SSHD further found that the exception identified in Article 33(2) of the Refugee Convention to the principle of non-refoulement applies to this appellant [44] and further certified that the presumption in s72(2) of the Nationality, Immigration and Asylum Act 2002 Act ("2002 Act") applies [43]. The Secretary of State concluded his decision by confirming that: (i) although the appellant's refugee status had been revoked, his indefinite leave to remain would remain in place; and, (ii) the SSHD does not intend to return the appellant to Eritrea.

Appeal against SSHD's Decision to the FtT

5. Before turning to the First-tier Tribunal's decision, it is prudent to set out the statutory grounds of appeal upon which the appellant was entitled to rely before the First-tier Tribunal, which are to be found in section 84(3) of the 2002 Act:

"(3) An appeal under Section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds -

- (a) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligation under the Refugee Convention;
 - (b) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection."
6. It is these grounds that form the framework to the First-tier Tribunal's consideration of the appeal. Unfortunately, this fact appears to have bypassed the First-tier Tribunal. The First-tier Tribunal confined itself almost exclusively to a consideration of whether the provisions of section 72 of the 2002 Act bite in relation to this appellant i.e. it asked itself the question of whether the appellant had rebutted the presumption that he is a danger to the community, concluding against the appellant.

Grounds of Appeal against FtT's Decision

7. The grounds of appeal (upon which permission was granted by First-tier Tribunal Judge Nightingale) assert generally that the FtT took account of immaterial matters and failed to take account of material matters in its assessment of the application of section 72 of the 2002 Act.
8. It is, first, asserted that the FtT failed to make a forward looking assessment of the issue of whether the appellant constitutes a danger to the community. I reject this ground. It is plain, when the FtT's decision is looked at as a whole, that it undertook the consideration on exactly the basis that the grounds assert it did not. Although the FtT took account of historic matters - such as the reports from probation service etc - it was perfectly entitled to do so. It was important to put the appellant's offending and the assessment of the likelihood of him being a danger to the community in the future, in its proper context. The fact that the Tribunal looked at the current position is made perfectly clear in paragraph 74 of its decision (for example, see the reference therein to a recent probation service letter recording the appellant's excellent compliance and subsequent good communication). The FtT also records other aspects of that same report which were positive to the appellant's case, observing that he is currently assessed as high risk. It also took account of the fact that it is likely that risk posed by the appellant would have been reassessed as medium, had there not been uncertainty over his immigration status [74].
9. By his second ground the appellant asserts a failure by the FtT to give adequate weight to specified documentation before it. Particular reference is made in the grounds to paragraph 54 of the FtT's decision and a "probation letter" quoted therein. Once again, I reject this ground. The FtT plainly took account of such evidence - referring to it not only in paragraph 54 of its decision but also in paragraph 74 thereof.
10. Issues of weight are a matter for the Tribunal, and it cannot be said that the FtT's approach to this or indeed any other evidence before it was

irrational, or otherwise unlawful. This finding also disposes of the third and fifth grounds. As to the fifth ground, the Tribunal clearly had cognisance of the evidence provided by the appellant's family members. It was not required to set out this evidence in detail, having observed that such evidence was given in paragraph 76 of its decision.

11. The Tribunal was also correct to take account of the features identified in paragraph 75 of its decision relating to the appellant's lack of settled address. It is not being said therein that the lack of settled address equates to the appellant being a danger to the community, but this is plainly a relevant matter in the context of the assessment of such issue as a whole.
12. In his sixth ground the appellant asserts that the FtT failed to appreciate that his father lives in Leeds and that contact with his father necessarily involves residence in or visiting Leeds. I find it difficult to understand how such a failure on the part of the FtT could be material and I conclude that it is not, even if it did not have cognisance of the fact that the appellant's father lives in Leeds. The seventh ground mischaracterises the FtT's perfectly lawful treatment of the appellant's present lack of access to benefits or employment. The eighth ground, which also has no merit, makes a confused reference to paragraph 80 of the FtT's decision - in which the FtT's finding of fact is unimpeachable.
13. By his final ground the appellant asserts that the FtT failed to lawfully conduct the balancing exercise required under section 72 of the 2002 Act, in particular by giving insufficient weight to the positive factors and undue weight to historic factors. I again conclude that this ground is not made out. The FtT was entitled to give whatever weight it thought appropriate to each of the relevant matters, as long as that weight was not irrational - which it was not. The FtT carefully looked at all the relevant features of the appellant's circumstances and rationally concluded that he had not rebutted the presumption that he is a danger to the community.
14. For the reasons given above, I find that the appellant has not made out any of the pleaded grounds. Had he done so I would nevertheless have dismissed his appeal because, for the reasons which follow, any error in the FtT's decision would not have been capable of affecting the outcome of the appeal.
15. I have set out above the grounds that the appellant was entitled to deploy before the FtT, which refer to the need to demonstrate that the decision leads to a breach of the United Kingdom's obligations under the Refugee Convention. Given that the appellant has retained Indefinite Leave to Remain in the UK I invited Mr Howard to identify an obligation under the Refugee Convention which it is said that the SSHD has breached by revoking the appellant's refugee status. He was unable to do so. In this case the appellant has ILR in the United Kingdom, without the possibility of being refouled to Eritrea (see the undertaking by the Secretary of State), and with access to employment and benefits as a consequence of having

ILR. Consequently, even if I am wrong in concluding that the First-tier Tribunal did not err in the way it dealt with section 72 of the 2002 Act, the appeal must nevertheless be dismissed because the appellant is unable to identify any obligation under the Refugee Convention which has been breached by the Secretary of State's decision.

Notice of Decision

For the reasons given above I conclude that there is no error of law in the First-tier Tribunal's decision capable of affecting the outcome of this appeal, and that the First-tier Tribunal's decision stands.

Signed:

A handwritten signature in black ink, appearing to read 'M. O'Connor', written over a faint, illegible stamp or watermark.

Upper Tribunal Judge O'Connor

Date: On 10 January 2019