



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00116/2018

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 12<sup>th</sup> April 2019

Decision and Reasons Promulgated  
On 17<sup>th</sup> April 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

WW  
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Howard, instructed by Fountain Solicitors (Walsall)  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as WW. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant, a non-Arab Darfur Sudanese citizen born in 1987 came to the UK in 2005 and claimed asylum. Although his asylum claim was initially refused, he was eventually recognised as a refugee in November 2010 with leave to remain until 24<sup>th</sup> November 2015. He did not apply to extend his leave to remain, although his refugee status continues until revoked.
2. On 20<sup>th</sup> July 2018, a deportation order was signed against him following sentencing for criminal offending<sup>1</sup>. The respondent, in that decision, set out his reasons for revoking the appellant's refugee status; certified, in accordance with 72(9)(b) Nationality Immigration and Asylum Act 2002, that the appellant had been convicted of a particularly serious crime and his continued presence in the UK constituted a danger to the community and thus the presumption under s72(2) applied; refused protection under article 2 and 3 ECHR (Humanitarian protection); that in any event he is excluded from protection under paragraph 339D(iii) & (iv); and that there were no very compelling circumstances over and above those described in s117C(4) and/or (5).
3. The First-tier Tribunal judge correctly considered the s72 certificate first and then went on to consider the other elements of the appellant's claim. The judge found
  - The appellant failed to rebut the s72 presumption that he is and remains a danger to the community;
  - There was insufficient evidence to support the revocation of his refugee status such that the appellant made out his Refugee Convention claim as a non-Arab Darfuri from the Berti tribe (not on the grounds of his political activity or opinion), but he was, because of the s72 certificate, excluded from protection.
  - The appellant has not demonstrated that his return to Sudan would be a breach of his Article 2 and/or 3 rights;
  - There are not very significant obstacles to his reintegration to Sudan; he has not been lawfully resident in the UK for most of his life, he is not socially and culturally integrated in the UK and there are not very compelling circumstances over and above those set out in s117C(4) and or (5).
4. The appellant sought, and was granted, permission to appeal on 3 grounds, although in fact grounds 1 & 2 are in essence the same: that it having been accepted that the appellant was at risk of being persecuted for a Convention reason as a non-Arab Darfur from Sudan, the First-tier Tribunal failed to give reasons for finding he was not at Article 3 risk. Ground 3 was that the judge had failed to give adequate reasons why the evidence of a witness was not sufficient to rebut the presumption that the appellant was a risk to the community.

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<sup>1</sup> 10 July 2007 12-month community order and unpaid work of 160 hours following conviction for affray; 5 May 2008 breach of community order; 24 October 2013 robbery and 2 counts of theft 10 years imprisonment.

5. The respondent did not cross-appeal the finding of the First-tier Tribunal that the appellant was at risk of being persecuted for a Convention reason as a non-Arab Darfuri from Sudan.

#### Error of Law

6. In considering risk under Article 3, the First-tier Tribunal judge has considered issues of destitution/hardship (relying upon *MA (Somalia)* [2018] EWCA Civ 994 to dismiss the appeal on Article 3 grounds) rather than issues of serious harm/persecution. Mr McVeety acknowledged that there had been no consideration by the judge of the risk of persecution and serious harm which, in the context of the refugee findings which were not under challenge, was an error of law.
7. I am satisfied that the First-tier Tribunal judge erred in law in his Article 3 finding on the risk of being persecuted and set aside that element of the decision to be remade.
8. In so far as the s72 certificate is concerned, the First-tier Tribunal judge set out the evidence before him which included a summary of the evidence of Mr Liggett. Mr Liggett described himself in his letter in support as a personal friend who has known him for the last 5 ½ years, initially visiting him in prison and then keeping in touch after his release. My attention was drawn to Mr Liggett's oral evidence that he was aware that the offence involved robbery, violence and a knife; this is recorded in the First-tier Tribunal decision. Mr Howard submitted that the judge's conclusion that Mr Liggett was not fully informed of the nature of the offence was a conclusion drawn without adequate reasons, and had that conclusion not been drawn, the balance to be struck may well have been different.
9. The First-tier Tribunal judge accurately recorded Mr Liggett's evidence. He also sets out the other evidence before him including a letter from the National probation Service and the OASys report. He records that the probation letter assesses the appellant as at high risk of serious to the public and medium risk to a known adult and that the risk was imminent given the offence was financially motivated. His finding, given the nature of the offence<sup>2</sup> as described in the sentencing remarks and the OASys report, that Mr Liggett was unaware of the totality of the offence was a finding that was plainly open to him. The judge set out that he had to balance the factors for and against the appellant. In considering the evidence, the judge took account of the extent and nature of the offence, including that the sentencing judge found no mitigating factors.
10. I am satisfied that the objection by the appellant to the finding that he had not rebutted the s72 presumption is no more than an objection. The First-tier Tribunal judge took account of all the factors and matters before him and reached a conclusion that was plainly open to him, setting out detailed reasons

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<sup>2</sup> A summary of which was set out in the First-tier Tribunal decision and included the appellant, with one other, forcing the door of the flat where the victim was asleep while armed with a substantial kitchen knife, ransacked the flat, grabbed the victim by the throat, threatened him with death, punched and kicked him to the head and body, threatened him with beheading, cut him with a knife and threatened him with having his eyes removed with a screwdriver.

for his findings that cannot reasonably be undermined. I am satisfied there is no error of law by the First-tier Tribunal judge in upholding the certificate.

11. I set aside the First-tier Tribunal decision in so far as it relates to the Article 3 finding on persecution/serious harm only.

Remaking the decision

12. I notified both parties at the conclusion of the hearing that, given the refugee finding, I would find that the appellant was at risk of a breach of his Article 3 rights if deported to Sudan. Neither party dissented from this nor made submissions to the contrary.
13. The only issue outstanding at the end of the hearing was whether the judge had made an error of law in upholding the s72 certificate. Given my finding that there is no error of law, I remake the decision allowing the appeal on Article 3 grounds – the appellant is, as a non-Arab Darfuri at risk of being persecuted and thus suffering serious harm if deported to Sudan.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law in so far as his conclusions on whether there would be a breach of Article 3 were concerned.

I set aside the decision on that limited basis and remake the decision by allowing it on Article 3 human rights grounds only.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 12<sup>th</sup> April 2019



Upper Tribunal Judge Coker