Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13318/2019

THE IMMIGRATION ACTS

Heard at Field House (via Teams)	**Decision & Reasons Promulgated**
On 17 June 2021	**On 16 August 2021**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE BLUNDELL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

REKAN SHWAN KAKARASH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr P Deller, Senior Presenting Officer
For the Respondent: Ms A Radford, instructed by Turpin Miller LLP

DECISION AND REASONS

Introduction

1. At 9 o'clock in the morning on 22 June 2018, there was an argument between two customers at a Subway sandwich shop in Peterborough. The argument began because one customer, Mr Kakarash, felt that he should

not have to queue to buy a cookie. The other customer suggested that he should wait his turn. The argument escalated to the point that the other customer was headbutted and stabbed in the shoulder by Mr Kakarash.

2. The Secretary of State took the view that this was a serious crime which justified the revocation of Mr Kakarash's humanitarian protection. On appeal against that decision, the First-tier Tribunal accepted that the crime was a serious one which justified revocation under the Qualification Directive and the Immigration Rules but allowed the appeal nevertheless. This appeal concerns the correctness of that decision.

3. To avoid confusion, we will refer to the parties as they were before the FtT: Mr Kakarash as the appellant, the Secretary of State as the respondent.

Background

4. The appellant is an Iraqi national who was born on 18 April 1997. He entered the UK unlawfully, as an unaccompanied asylum-seeking child, and claimed asylum on 10 November 2014. He claimed to be a Kurd from a contested area which had been attacked by ISIS. The respondent accepted that he could not return to that area but concluded that he could safely and reasonably relocate to the Independent Kurdish Region.

5. On appeal to the First-tier Tribunal, Judge John Jones QC noted that the appellant (who was, by that stage, an adult) did not rely on the Refugee Convention. The judge considered and rejected the points made by the respondent about the truthfulness of the appellant's account. He accepted the core of that account, that the appellant 'is an Iraqi Kurd who fled his village when it was attacked by ISIS and that it is not now safe for him to return to his home area'. The judge also accepted that the appellant's father was killed in the attack and that the appellant had been unable to trace any of his other family members. Applying AA (Article 15(c) Iraq CG [2015] UKUT 544 (IAC), the judge found that the appellant could not return to his home area (of Gwer, near Erbil) and that his relocation to the IKR would be unduly harsh. So it was that the appeal was allowed on Humanitarian Protection and Article 3 ECHR grounds.

6. Judge Jones QC's decision was issued on 9 December 2015. There was an appeal to the Upper Tribunal and, although we have not seen the resulting decision, it is not in dispute that the decision of the FtT stood undisturbed. The appellant was granted Humanitarian Protection on 10 April 2016, valid until 9 April 2021.

7. The stabbing occurred on 22 June 2018. The appellant was arrested at the scene. On 14 December 2018, at a Plea and Trial Preparation Hearing before the Crown Court at Cambridge, he pleaded guilty to two offences: unlawful wounding and having a bladed article in a public place. That

plea was offered on a basis of excessive self-defence but that basis was ultimately abandoned by the appellant. On 31 January 2019, the appellant was sentenced by HHJ Bridge to a total of fifteen months' imprisonment.

8. The respondent wrote to the appellant on 16 February 2019, seeking any reasons why he should not be deported as a foreign criminal, as defined in the UK Borders Act 2007. She stated, amongst other things, that she would be considering whether to take any action in respect of the appellant's Humanitarian Protection status. She invited him to make representations on that and other matters within 20 days, after which she would consider 'whether you continue to qualify for protection status and, if not, whether you should be deported'.

9. The appellant responded to the respondent's letter on 10 April 2019. He had produced the response himself with the assistance of fellow prisoners. He stated that he was married to a British citizen and that he had a child. He had no problems related to substance abuse; the index offence was his first; and there was no prospect of its repetition. In all the circumstances, it would be disproportionate under Article 8 ECHR to deport the appellant. This letter was supported by evidence in support of the appellant's private and family life in the UK.

10. On 23 July 2019, the respondent wrote to the appellant at HMP Huntercombe. She refused his human rights claim and revoked his Humanitarian Protection. For reasons which will shortly become apparent, we need not mention the basis upon which the respondent reached the former conclusion. The latter conclusion was based on the respondent's conclusions that the appellant had committed a serious crime or, alternatively, that he constituted a danger to the community. She cited paragraphs 339GB(iii) and (iv) of the Immigration Rules as applying to the appellant. The respondent also concluded, applying paragraph 339GA of the Immigration Rules, that the circumstances which led to the grant of humanitarian protection had ceased to exist or had changed to such a degree that such protection was no longer required.

The Appeal to the First-tier Tribunal

11. The appellant appealed to the FtT on 2 August 2019. He had by this stage instructed his current solicitors and the IAFT-5 was prepared by them. Of the eight boxes which may be completed to indicate the grounds of appeal, three were completed. It was submitted in the first that removal of the appellant would be in breach of the Refugee Convention. In the second, it was submitted that the appellant's removal to Iraq would expose him to inhuman and degrading treatment and he was said to be 'eligible for humanitarian protection'. In the third, there was reference to Articles 3 and 8 ECHR and reliance on the appellant's relationships with his partner

and child in the UK. The fourth and fifth boxes – which invited submissions in relation to the decision to revoke the appellant's protection status – were left blank.

12. Before the appeal could be heard by the FtT, there were two further events of note. On 18 May 2020, the appellant was convicted of detaining a child without lawful authority and given a twelve-month conditional discharge by Cambridgeshire Magistrates' Court. Secondly, on 8 June 2020, the respondent stated in writing that she had withdrawn the decision to deport the appellant. She nevertheless maintained the decision to revoke his humanitarian protection. She indicated her intention to grant the appellant twelve months' discretionary leave to remain.

13. The appeal came before a panel of the FtT comprising Judges Brannan and Singer on 8 October 2020. The appellant was represented by Ms Radford, the respondent by a Presenting Officer (not Mr Deller). Ms Radford had produced a skeleton argument, in which she argued *only* that the decision to revoke the appellant's protection status breached the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection, under s84(3)(b) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

14. Mr Radford's argument before the FtT might be summarised quite shortly. She submitted that the only issue was whether the appellant was excluded from Humanitarian Protection because he was a danger to the community or had committed a serious offence: [2]. Having set out paragraphs 339GB(iii) and (iv) of the Immigration Rules, Ms Radford made reference to the respondent's policy entitled *Humanitarian Protection*, dated 7 March 2017. She did so in order to assist the Tribunal in considering whether the crimes committed by the appellant were serious crimes. She submitted that the index offence was not such an offence: [9]. At [10]-[18], she submitted, with reference to an array of relevant authority, that the appellant did not represent a danger to the community. Ms Radford therefore submitted that neither paragraph 339GB(iii) nor 339GB(iv) applied to the appellant and that his appeal against the revocation of his humanitarian protection should be allowed accordingly.

15. The FtT did not accept Ms Radford's argument that the index offence was not a serious one. It found, in fact, that the offence was a 'particularly serious' one: [27]. It did not accept that the appellant represented a danger to the community: [31]. It found, in terms, that the appellant's Humanitarian Protection would fall for revocation under the Immigration Rules because he had committed a serious crime: [53].

16. The basis upon which the FtT allowed the appeal was not one which had been advanced by Ms Radford, although it took as its foundation the

respondent's *Humanitarian Protection* policy she had adduced in support of the argument we have summarised above. The FtT reasoned, in summary, that the respondent's policy amalgamated what were two separate grounds for revocation in the Qualification Directive. It based that conclusion on a section of the policy which we will set out more fully below. For present purposes, it suffices to note that the sentence upon which the FtT seized was:

> Paragraphs 339D(iii) and (iv) reflect Article 17(i)(d) and (b) of the QD and apply where there are reasonable grounds for regarding an individual as a danger to the security of the UK, including those who exhibit extremist behaviours, or to **those who have been convicted of a particularly serious crime such that they are deemed to be a danger to the community**.
>
> [the emphasis is ours]

17. The FtT considered, at [19], that the respondent had imposed a 'higher threshold' in this policy than was required by the Rules or the Qualification Directive, both of which 'require *either* a serious crime or being a danger to the community'. Having found in the subsequent paragraphs that the appellant had committed a serious crime but not that he was a danger to the community, the FtT then asked itself whether the appellant had 'a legitimate expectation that his Humanitarian Protection will not be revoked based on the Respondent's policy'.

18. The FtT cited domestic authority on the doctrine of legitimate expectation at [36]-[38]. At [40], it reiterated its view that the respondent's policy went further and placed a higher threshold for revocation than the Directive or the Immigration Rules. It considered that this was a 'sufficiently clear and unambiguous statement of the practice [the respondent] intends to follow when considering exclusion from or revocation of Humanitarian Protection'.

19. At [41], the FtT noted that the Directive allowed the Member States to set standards which give greater protection than the Directive itself, citing paragraph 8 of the Recitals in support of statement. At [42], the FtT noted that there was no such discretion in the Immigration Rules, citing the mandatory terms of paragraph 339G. At [43]-[46], the FtT explained why it considered that Humanitarian Protection was not declaratory of an underlying status. This meant, the FtT stated at [47], that granting Humanitarian Protection was 'a grant of leave rather than a recognition of status'. The respondent therefore granted leave, it concluded outside the Immigration Rules. At [48], the FtT stated:

> The appellant is therefore the beneficiary of a policy which the respondent has lawfully adopted meaning that he can retain his Humanitarian Protection outside the Immigration Rules despite

> having committed a serious crime. In the present proceedings, the respondent wishes to go against this policy.

20. Under a sub-heading "What should the Tribunal do?", the FtT's final reasons for allowing the appeal were as follows. They noted that the respondent had not 'articulated any reason why she should depart from her policy:' and that there were public policy reasons (good public administration and treating revocation of Humanitarian Protection and refugee status similarly) in favour of the policy being applied: [50]. The decision concluded as follows:

> [52] In the circumstances we consider that the respondent's policy should be applied. As we have found that the respondent has failed to prove that the appellant is a danger to the community, he does not qualify under the Respondent's policy for his Humanitarian Protection to be revoked. The appeal therefore succeeds under s84(3)(b) because we find that the decision to revoke the appellant's protection status breached the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection.
>
> [53] We reiterate that, in the absence of the respondent's policy, the appellant would qualify to have his Humanitarian Protection revoked under the Immigration Rules.

The Appeal to the Upper Tribunal

21. In grounds of appeal settled by Mr Deller, the respondent advances two arguments which might be summarised as follows. Firstly, that the FtT exceeded its statutory jurisdiction in allowing the appellant's appeal with reference to the respondent's policy, since to do so was to allow the appeal on the basis that the decision was 'not in accordance with the law', which ground of appeal had long since been removed from the 2002 Act. Secondly, that the policy had been misapplied by the FtT. It was not sufficiently unambiguous to warrant a general departure from the Directive and the Rules and it was not, in any event, for the FtT to impose its own view when the policy had not been considered by the respondent.

22. Permission was granted by Upper Tribunal Judge Lindsley on 15 December 2020. She considered that the first ground was stronger than the second but gave permission on both.

23. The appeal came before Upper Tribunal Judge Blundell on 22 April 2021. Ms Radford's instructing solicitors filed a short reply to the grounds of appeal at 0728 that morning. In it, Ms Radford sought to support the reasoning of the FtT. In the event that the Upper Tribunal found for the Secretary of State in relation to Humanitarian Protection, Ms Radford sought to 'revive' the original asylum grounds of appeal and to argue that the appellant would be at risk on return to Baghdad on three of the grounds recognised in Article 1A(2) of the Refugee Convention.

24. Two hours or so before the hearing on 22 April was due to be called on, Ms Radford's instructing solicitors filed and served a skeleton argument in which she sought to develop her defence of the FtT's decision. In this skeleton, Ms Radford submitted, *inter alia*, that the respondent owed an obligation of good administration to the appellant and that it had accordingly been proper for the FtT to hold the respondent to her policy. She cited Article 41 of the Charter of Fundamental Rights of the European Union and a raft of authority from the CJEU, including Schindler Holding Ltd v European Commission (Re Elevators and Escalators Cartel) (Case T-138/07) [2013] 4 CMLR 39 in support of this submission. The late submission of the rule 24 response and, in particular, the skeleton argument placed Mr Whitwell (who then represented the respondent) at a disadvantage and the appeal was adjourned to enable the respondent to consider and respond to these new points.

25. On 28 May 2021, Mr Deller's skeleton argument was filed with the Upper Tribunal. He submitted that the FtT had erred as to the limits of its statutory jurisdiction under Part 5 of the 2002 Act; that it had erred in holding that a policy could extend the ambit of the Directive; and that it had also erred in directly applying that policy when the outcome was not certain. In response to Ms Radford's submissions in relation to Article 41 of the Charter, Mr Deller submitted that such an approach would be more arbitrary than the Tribunal staying within its statutory limitations.

26. At our request, Ms Radford made her submissions on a procedural matter first. She stated that the decision under appeal to the FtT had been the refusal of a human rights claim and the revocation of protection but the former decision had been withdrawn in advance of the hearing. The respondent had initially raised the ground of revocation in paragraph 339GA but that too had been withdrawn. Ms Radford accepted that the notice of appeal to the FtT had raised no grounds against the revocation of protection, but she submitted that the grounds of appeal had been impliedly varied during the course of the appeal. The sole ground of appeal was therefore whether the respondent's decision breached the UK's obligations in relation to a person who was eligible for a grant of humanitarian protection. She had not sought to pursue a submission before the FtT in relation to the Refugee Convention, but she would seek to do so in the event that the Secretary of State prevailed in relation to humanitarian protection.

27. Mr Deller noted that there had clearly been some confusion before the FtT. The respondent had raised two reasons for revoking the appellant's status and she had issued three different decisions. With his customary fairness, he did not invite the Upper Tribunal to take a narrow view of what had been in issue before the FtT.

28. As to the merits of the respondent's appeal, Mr Deller was essentially content to adopt his grounds of appeal and his skeleton argument. The statutory jurisdiction of the FtT had been radically altered by the Immigration Act 2014. The authorities cited by the FtT and by Ms Radford all related to the previous version of Part 5 of the 2002 Act, which included the ground of appeal that the decision was not in accordance with the law. AG and others (Policies; executive discretions; Tribunal's powers) Kosovo [2007] UKAIT 00082 was one such case under the old regime. In contrast, this appellant only had available to him two grounds of appeal, relating to the Refugee Convention and Humanitarian Protection. The appellant plainly met the criteria for exclusion under Article 17 of the Directive. The FtT had found as much. Even if, as the FtT had found, the policy conflated the two tests (commission of a serious crime and danger to the community), section 84(3)(b) of the 2002 Act did not permit the FtT to apply criteria which were over and above the Directive.

29. Ms Radford submitted that there were difficulties with the respondent's construction of the ground of appeal upon which the appellant had relied before the FtT. By s113 of the 2002 Act, humanitarian protection has the meaning given in s82(2). By s82(2), humanitarian protection was to be construed in accordance with the Immigration Rules. By paragraph 6.2 of the Immigration Rules, 'humanitarian protection' means 'leave granted pursuant to paragraph 339C and which had not been revoked pursuant to paragraph 339G to 339H. Ms Radford submitted, by reference to this definition, that a person who had already been granted HP must be a person who was 'eligible' for that status, to whom the UK owed a range of obligations, including those in Article 41 of the Charter. It would be neither fair nor appropriate to require an individual to prove their eligibility for HP time and again. The Refugee Convention gave the individual a degree of protection in such circumstances and the same approach should be adopted in relation to the revocation of HP. A person was to be treated as eligible for HP unless and until it was lawfully revoked.

30. Ms Radford did not accept that s84(3)(b) required the FtT to consider first whether the appellant was eligible for a grant of HP. The burden was instead on the respondent to show that the appellant was ineligible and the policy was to be applied or considered at that stage of the enquiry. The respondent had made a policy – as she was entitled to do under the Directive – about how she would apply that Directive and her own Rules. That policy was demonstrably more favourable to the appellant than the minimum standards in the Directive and the UK's obligations to him included holding the respondent to that policy.

31. Ms Radford took us to the salient parts of the policy, which had been helpfully reproduced in an agreed bundle of authorities. She accepted that

there were parts of the policy which accurately reflected the Directive but she submitted that it was clear that the respondent had committed herself to a more restrictive approach than was required in the Rules or the Directive. Ms Radford accepted that the respondent's policy was 'a little bit odd' if read in the way for which she contended but she maintained that it was sufficiently clear for the respondent to be held to it.

32. Mr Deller had no response and was content to rely on his previous submissions.

33. We noted that Ms Radford had not relied on the asylum ground of appeal which had been available before the FtT. We noted that she wished to raise it in the event that we were with the Secretary of State in respect of HP. We expressed some disquiet at the possibility that the respondent might have available to her, in a subsequent decision, the certification power which appears in s96 of the 2002 Act. Mr Deller did not feel able, in response to that observation, to tie the hands of a future decision maker. He did note, however, that the progress of this appeal had been rather complicated and that it would probably be inappropriate to certify a future asylum claim on that basis.

34. Ms Radford confirmed that she would provide us with a copy of her skeleton argument before the FtT, which had not been retained on the file. She also confirmed that there would be nothing within that skeleton which was relevant to the policy point taken by the FtT. She had not developed any argument in that respect and neither party had been called upon to make submissions on the part of the policy which was held to be determinative of the appeal.

35. We reserved our decision.

Legal Framework

36. It is necessary to set out a number of provisions in order to explain our decision. We begin with the salient parts of the 2002 Act.

82 - Right of appeal to the Tribunal

(1) A person ("P") may appeal to the Tribunal where –

(a) […]

(b) […]

(c) The Secretary of State has decided to revoke P's protection status

(2) For the purposes of this Part –

(a) […]

(b) […]

(c) A person has 'protection status' if the person has been granted leave to enter or remain in the United Kingdom as a refugee or as a person eligible for a grant of humanitarian protection

(d) 'humanitarian protection' is to be construed in accordance with the immigration rules.

(e) …

(3) …

84 - Grounds of appeal

(1) An appeal under section 82(1)(a) refusal of protection claim) must be brought on one or more of the following grounds –

(a) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention;

(b) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;

(c) that removal of the appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention)

(2) An appeal under section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.

(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 obligations 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

37. Council Directive 2004/83/EC ("the Qualification Directive" or "QD") provides for minimum standards for the qualification and status of refugees or as person who otherwise need international protection.

38. The QD has forty paragraphs of Recitals. Only (8) was drawn specifically to our attention, although we also note (14), (24) and (25):

(8) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(a) of the Geneva Convention, or a person who otherwise needs international protection

[…]

(14) The recognition of refugee status is a declaratory act.

[…]

(24) Minimum standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.

[…]

(25) It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.

39. Amongst the definitions in Article 2 of the Qualification Directive, we find the following:

(e) 'but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(f) 'subsidiary protection status' means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

40. Article 3 provides as follows:

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

41. Chapter 2 of the Directive makes provision about the assessment of applications for international protection. Chapters 3 and 4 concern the 'Qualification for Being a Refugee' and 'Refugee Status' respectively. Chapter 5 is entitled 'Qualification for Subsidiary Protection' and contains Articles 15, 16 and 17.

42. Article 15 contains three definitions of the types of 'serious harm' from which an individual might be protected. Article 16 makes provision for the cessation of eligibility for subsidiary protection when the circumstances which led to the granting of that protection have ceased to exist or have changed to such an extent that protection is no longer required.

43. Article 17, entitled 'Exclusion' concerns the circumstances in which an individual is excluded from being eligible for subsidiary protection:

(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:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious crime;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

(2) Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

(3) […]

It is Chapter Six of the Qualification Directive with which we are principally concerned. Article 18 provides that Member States shall grant subsidiary protection status to a person who is eligible for it in accordance with Chapters Two and Five. Article 19 provides as follows:

Revocation of, ending of or refusal to renew subsidiary protection status

(1) Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.

(2) Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).

(3) Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status

(4) Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State,

which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

44. The QD was implemented in the United Kingdom by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and by amendments to the Immigration Rules. Nothing relevant for present purposes appears in the Regulations. Specific provision was originally made, with effect from 9 October 2006, at paragraphs 339C to 339G of the Immigration Rules. Revisions were made to those provisions in November 2015 and November 2016. Currently, and at all material times for the purpose of this appeal, Part 11 of the Immigration Rules provides materially as follows:

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) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;

(ii) they do 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 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 themselves of the protection of that country; and

(iv) they are not excluded from a grant of humanitarian protection.

339CA […]

339 D […]

339E […]

Refusal of humanitarian protection

339F. Where the criteria set out in paragraph 339C is not met humanitarian protection will be refused.

Revocation of, ending of or refusal to renew humanitarian protection

339G. A person's humanitarian protection granted under paragraph 339C will be revoked or not renewed if any of paragraphs 339GA to 339GB apply. A person's humanitarian protection granted under paragraph 339C may be revoked or not renewed if any of paragraphs 339GC to paragraph 339GD apply.

339GA […]

Revocation of humanitarian protection on the grounds of exclusion

339GB. This paragraph applies where the Secretary of State is satisfied that:

(i) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that they have 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;

(ii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that they are guilty of acts contrary to the purposes and principles of the United Nations or have committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;

(iii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that they constitute a danger to the community or to the security of the United Kingdom;

(iv) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that they have committed a serious crime; or

(v) the person granted humanitarian protection should have been or is excluded from humanitarian protection because prior to their admission to the United Kingdom the person committed a crime outside the scope of paragraph 339GB (i) and (iv) that would be punishable by imprisonment had it been committed in the United Kingdom and the person left their country of origin solely in order to avoid sanctions resulting from the crime.

45. Before leaving the Immigration Rules, we should also remind ourselves that Ms Radford made reference in her submissions to paragraph 6, which states that 'humanitarian protection' means "leave granted pursuant to paragraph 339C and which has not been revoked pursuant to paragraph 339G to 339H".

46. The policy upon which the FtT based its decision is the respondent's policy on Humanitarian Protection, now in its fifth iteration, which was published on 7 March 2017. The policy is 29 pages long and we do not propose to set out lengthy tracts of it in this decision. At the time of writing, it may be found at the footnoted hyperlink[1].

47. Two particular sections of the policy are relevant. The second refers back to the first and it is logical, in this context, to consider the sections in that order. At page 23, the second relevant section is entitled "Revocation of humanitarian protection". It begins by stating that an individual's

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597377/Humanitarian-protection-v5_0.pdf

humanitarian protection 'will be revoked or not renewed if any of paragraphs 339GA to 339GB apply'. Under the sub-heading 'Triggers that lead to a review of humanitarian protection', there is a list of such 'triggers' for caseworkers. One of the six triggers is criminality, in respect of which the policy states:

> "Irrespective of the length of sentence, a review of a grant of HP must be conducted where there are criminality issues (paragraph 339GB(iii to v). Criminality will not normally amount to a change of personal circumstances under paragraph 339GA such that a person no longer needs protection, but it is possible that a review may highlight that protection is no longer needed or that exclusion provisions apply."

48. Under the sub-heading 'Considering revocation of humanitarian protection, there is guidance on the application of paragraphs 339GA, 339GB and 339GD. In respect of paragraph 339GB, the policy provides as follows:

> "*Revocation on the grounds of exclusion*
>
> Under paragraph 339GB(i) to(v)of the Immigration Rules, HP will be revoked or not renewed if the Secretary of State is satisfied that one of the following applies:
>
> - the person granted HP should have been or is excluded because there are serious reasons for considering that they have 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
>
> - the person granted HP should have been or is excluded because there are serious reasons for considering that they are guilty of acts contrary to the purposes and principles of the United Nations or has committed or prepared or instigated such acts
>
> - the person granted HP should have been or is excluded because there are serious reasons for considering that they constitute a danger to the community or to the security of the UK
>
> - the person granted HP should have been or is excluded because there are serious reasons for considering that they have committed a serious crime
>
> - the person granted HP should have been or is excluded because prior to their admission to the UK they committed a crime outside the scope of paragraph 339GB (i) and (iv) that would be punishable by imprisonment had it been committed in the UK and they left their country of origin solely in order to avoid sanctions resulting from the crime
>
> Caseworkers must refer to exclusion from Humanitarian Protection and particularly serious criminality for the relevant definitions of serious crime and examples of when the claimant should be regarded as a danger to the community or to the security of the UK."

49. The section entitled 'Exclusion from humanitarian protection' begins at the foot of page 16 of the policy. It begins by stating that a person will not be eligible for a grant of HP if they fall to be excluded under paragraph 339D of the Immigration Rules for *one of* the following reasons:

> "• there are serious reasons for considering they have 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
>
> • there are serious reasons for considering they are guilty of acts contrary to the purposes and principles of the United Nations or they have committed, prepared, instigated or encouraged or induced others to commit, prepare or instigate such acts
>
> • there are serious reasons for considering that they are a danger to the community or to the security of the UK
>
> • there are serious reasons for considering that they have committed a serious crime
>
> • prior to their admission to the UK they committed a crime that would be punishable by imprisonment were it committed in the UK and they left their country of origin solely to avoid sanctions resulting from the crime"

50. After that bullet-pointed list of alternatives, there is the following additional guidance:

> "Paragraph 339D mirrors the exclusion provisions in Article 17 of the Qualification Directive (QD). Where the conduct is the same as that in Article 1F of Article 33(2) of the Refugee Convention, they must be interpreted in the same way. Paragraph 339D(i) reflects Article 17(i)(a) of the QD and applies to those who would be excluded from refugee status under Article 1F(a) of the Refugee Convention. Paragraph 339D(ii) reflects Article 17(i)(c) of the QD and applies to those who would be excluded under Article 1F(c) of the Refugee Convention. See Exclusion under Article 1F and 33(2) of the Refugee Convention.
>
> Paragraphs 339D(iii) and (iv) reflect Article 17(i)(d) and (b) of the QD and apply where there are reasonable grounds for regarding an individual as a danger to the security of the UK, including those who exhibit extremist behaviours, or to those who have been convicted of a particularly serious crime such that they are deemed to be a danger to the community."

51. There are then separate sections on 'Serious crimes' and 'Danger to the security of the community'. The section about serious crimes makes

reference, amongst other things, to what was said by Ward LJ in AH (Algeria) v SSHD [2012] EWCA Civ 395; [2012] 1 WLR 3469.

Analysis

52. It is quite clear that the FtT erred in law in its decision to allow the appeal on the basis we have summarised above. The only rational conclusion which was open to it, having concluded that the appellant had committed a serious crime, was to dismiss the appeal insofar as it was brought on the ground of appeal in s84(3)(b) of the 2002 Act. Our reasons for reaching that conclusion are as follows.

53. Quite aside from the points advanced by Mr Deller before us, it became apparent at the very end of Ms Radford's submissions that there was a wholesale failure of fair procedure before the FtT. Her skeleton argument before the FtT had not been retained on the Tribunal's file and we asked for a copy of it. She undertook to provide a copy by email but noted, with characteristic frankness, that we would find no argument directed to a legitimate expectation based on the respondent's policy in that skeleton. She stated that she had made no such submission before the FtT and the respondent had not had an opportunity to respond to this point.

54. With respect to the FtT, that was not an appropriate way to proceed. If the FtT had formed a provisional view, after it had risen, that the respondent's policy somehow committed her to a more restrictive approach to revocation of humanitarian protection than was required by the QD or the Immigration Rules, fairness required that both parties should have an opportunity to make submissions on the point. Whether or not the conclusion was substantively correct, therefore, it was reached by a procedurally improper means.

55. The conclusion was not substantively correct, however. The FtT's understanding of the policy was clearly wrong. The only rational understanding of the policy was that the respondent had instructed her staff to follow the approach required by the QD and the Immigration Rules in considering whether or not to revoke humanitarian protection.

56. Policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context, and it is for a court or Tribunal to give the policy its proper meaning: Tesco Stores Ltd v Dundee City Council [2012] UKSC 13; [2012] PTSR 983, at [18], endorsing R (Raissi) v SSHD [2008] EWCA Civ 72; [2008] QB 836. As Sedley LJ put it in First Secretary of State v Sainsbury's Supermarkets Ltd [2005] EWCA Civ 520; [2005] NPC 60, "What a policy says, it is." To similar effect is what was said by Sir Thomas Bingham MR in R v Director of Passenger Rail Franchising ex parte Save Our Railways (1996) CLC 589: a policy 'means what it means'. It is an error of law for a decision maker to attach a

meaning to a policy which it is not capable of bearing: R v Derbyshire County Council, Ex p Woods [1997] JPL 958.

57. What this policy clearly did not mean was that the respondent had committed herself to revoking HP on the grounds of criminality only where the crime was a serious one and the individual concerned represented a danger to the community. The FtT gave the policy that meaning as a result of the paragraph which we have set out at [16] and [51] above. In doing so, it fell into error in several ways.

58. The FtT erred, firstly, in failing to note that neither the relevant paragraph nor the policy as a whole signals a clear intention to depart from the approach adopted in the QD and the Immigration Rules. Article 17(i)(b) and (d) contain two alternative grounds upon which an individual can be excluded from HP: commission of a serious crime *or* danger to the community. Article 19(3)(a), which makes provision for revocation with reference to Article 17(1), does not conflate those two alternatives. The alternatives are preserved in paragraph 339D(iii) and (iv) of the Immigration Rules, as they are in paragraph 339GB(iii) and (iv). The bullet-pointed list at pages 24-25 of the policy entitled 'Revocation on the grounds of exclusion' (which we have reproduced at [49] above) also preserves the alternative grounds for revocation which appear in the QD and the Rules.

59. Nowhere in the policy is there any indication that the respondent has chosen, notwithstanding the clear intention behind the Immigration Rules, to adopt a policy which would severely limit her ability to revoke the humanitarian protection status those who commit crimes. Instead, the policy reflects the respondent's intention that decisions should be made consistently with the QD and the Immigration Rules. The reader is consistently directed towards the relevant provisions and page 6 of the policy states that 'the Immigration Rules and our policy on HP *reflect* the subsidiary protection provisions in Articles 15 to 19 of the Qualification Directive'. The policy is said, on the same page, to be designed to *meet* (not exceed) the UK's international obligations under EU Law. We also note the statement on page 7, that the policy is also designed to

> "Review cases in which someone with HP commits a criminal offence or evidence emerges that they represent a danger to security so that revocation action is taken where appropriate and the individual is removed or placed on more restrictive leave to facilitate removal as soon as possible." [emphasis added]

60. We recognise, of course, that the QD sets minimum standards (see Article 3 and (8) of the Recitals) and that it would accordingly be open to the respondent to adopt a policy which is more generous than the QD. She could therefore have adopted a policy pursuant to which revocation of (or

exclusion from) HP would only be pursued on grounds of criminality upon the commission of a serious crime and the presentation of a danger to the community. Reading the policy as a whole, however, it is simply not rational to conclude that the respondent intended to do so or did so.

61. The FtT also overlooked the context in which the policy was promulgated. The Secretary of State for the Home Department makes the Immigration Rules and they are placed before Parliament under the negative resolution procedure prescribed by the Immigration Act 1971. As we have explained above, the Immigration Rules on HP were formulated in 2006 and were subject to revision in late 2015 and late 2016. If the respondent intended drastically to restrict the circumstances in which she could revoke the HP of an individual such as the appellant, she evinced no such intention when she made the original Rules or when she amended the Rules in 2015 and 2016. It is inherently unlikely that she would have such an intention when she came to formulate the relevant policy, some four months later. Had she had such a significant intention, we incline to the view that she would have promulgated the necessary change by way of amendment to the Immigration Rules, rather than by way of a rather oblique sentence in the middle of a policy.

62. The FtT erred, therefore, in failing to consider the policy as a whole or in its proper context. It further erred, in our judgment, in failing to appreciate that the particular words upon which it seized ("to those who have been convicted of a particularly serious crime such that they are deemed to be a danger to the community") appear in a list of two examples. So much is clear from the earlier use of the word 'including'. The relevant paragraph states that those who exhibit extremist behaviours or those who have been convicted of a particularly serious crime such that they are deemed to be a danger to the community might be excluded. It does not state that exclusion on grounds of criminality would be appropriate *only* where the individual has committed a serious crime *and* represents a danger to the community. Properly understood, therefore, the sentence upon which the FtT seized provides examples of those who might be excluded; it does not purport to delimit the circumstances in which revocation is to be pursued.

63. For all of these reasons, therefore, we accept the submission made in the respondent's second ground of appeal that the policy was not sufficiently unambiguous to found a legitimate expectation that the respondent would not follow the approach to revocation prescribed by the Immigration Rules.

64. In order to consider the respondent's first ground of appeal, however, we must proceed on the basis that the policy was sufficiently clear and

unambiguous. Let us suppose for present purposes, therefore, that the policy had read as follows:

> "Notwithstanding the alternative bases for revocation of HP contained in paragraphs 339GB(iii) and (iv) of the Immigration Rules, it is the Secretary of State's current policy that revocation of P's humanitarian protection status on grounds of criminality will only be pursued when a serious crime has been committed by P *and* P represents a danger to the security of the UK."

65. By her first ground, the respondent submits that the First-tier Tribunal lost sight of the limited scope of its statutory jurisdiction and that the authorities it cited all related to the era in which the FtT (or its predecessors) was empowered to allow an appeal on the basis that the decision under appeal was 'otherwise not in accordance with the law'. Mr Deller submits that the FtT's only task – as presented by s84(3) of the 2002 Act – was 'to address breaches of international obligations' and that the respondent's policy was simply irrelevant to that task.

66. Mr Deller is obviously correct to observe that the FtT no longer has jurisdiction to consider whether a decision is 'otherwise not in accordance with the law'. Before the amendments to the 2002 Act which were made by the Immigration Act 2014, that ground of appeal was available to an appellant as a result of s84(1)(e) and the FtT was required by s86(3)(a) to allow the appeal insofar as it thought that the decision was not in accordance with the law. That ground of appeal was removed by the 2014 Act on 19 October 2014, subject to transitional and saving provisions which are presently immaterial.

67. As Mr Deller submits, the starting point must be that the authorities which explored the 'not in accordance with the law' ground of appeal are of no application following the statutory amendments made in 2014. To the extent that Greenwood No. 2 (para 398 considered) [2015] UKUT 629 (IAC) held otherwise, that decision was disapproved by a Presidential panel of the Upper Tribunal in Charles (human rights appeal: scope) [2018] UKUT 89 (IAC); [2018] Imm AR 911. The relevant paragraph of the judicial headnote in Charles is as follows:

> *Following the amendments to ss.82, 85 and 86 of NIAA 2002 by the Immigration Act 2014, it is no longer possible for the Tribunal to allow an appeal on the ground that a decision is not in accordance with the law. To this extent, Greenwood No. 2 (para 398 considered [2015] UKUT 629 (IAC) should no longer be followed.*

68. The FtT erred, therefore, in drawing on the decision in D S Abdi v SSHD [1996] Imm AR 14, since that decision considered the earlier and wider jurisdiction appellate jurisdiction. It also erred in having regard to R (Semeda) v SSHD [2015] UKUT 658 (IAC) because that was a decision on

an application for judicial review, in which there was no relevant statutory constraint on the Upper Tribunal's ability to consider public law errors in the decision under challenge.

69. We also accept the submission made by both advocates before us that the decision in Charles is to be read alongside what was said in SF & Ors (Guidance, post 2014 Act) Albania [2017] UKUT 120 (IAC); [2017] Imm AR 1003 and the subsequent consideration of that decision in MS (British citizenship; EEA appeals) Belgium [2019] UKUT 356 (IAC); [2019] INLR 226. As the President explained in the latter decision, SF (Albania) turned on the Tribunal's acceptance that a published policy applied in favour of the appellants, in light of which the respondent could not successfully resist the appellants' human rights appeals by pointing to the importance of maintaining immigration control as justifying their removal. There may be cases, such as SF (Albania), in which the satisfaction of a policy operates as a potentially determinative factor in a Tribunal's consideration of the fifth (not the third) of the questions posed by R (Razgar) v SSHD [2004] UKHL 27; [2004] Imm AR 381.

70. This was not a case in which a human rights ground of appeal was available to the appellant, however. Although the respondent had initially decided to refuse his human rights claim, that decision had been withdrawn before the hearing. The only extant decision was the decision to revoke the appellant's protection status and the grounds of appeal upon which he was entitled to rely concerned only the Refugee Convention and humanitarian protection. Even if there had been a clear policy statement of the kind we have postulated above, it would not have been open to the FtT in an appeal of this nature to conclude that the satisfaction of that policy reduced or removed the public interest in removal to the point that the decision was unlawful under section 6 of the Human Rights Act 1998; no such ground of appeal was available.

71. In recognition of the statutory obstacles in her path, Ms Radford did not submit that the FtT had been able to allow the appeal on the basis that the decision was not in accordance with the law or that the revocation of the appellant's protection status was somehow in breach of the ECHR. Her submission, instead, was that the Secretary of State owed the appellant an obligation of good administration, which encompassed a duty not to frustrate his legitimate expectation that she would adhere to her own policy, and that his appeal was properly allowed on the basis that the revocation therefore breached the UK's obligations in relation to persons eligible for a grant of humanitarian protection.

72. It is not necessary for the purposes of this decision to consider the scope of the 'obligations' contemplated in s84(3)(a). In deference to Ms Radford's researches, we nevertheless record the essential strands of her argument in

a little more detail. Article 41 of the EU Charter of Fundamental Rights describes the right of every person to 'have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.' (We note that the Charter is not part of domestic law after IP completion day but that the fundamental rights which exist irrespective of the Charter were retained beyond that point: s 5 of the European Withdrawal Act 2018, as amended, refers.) By reference to what was said at [120] of Schindler Holding v European Commission (T-138/07); [2013] 4 CMLR 39, Ms Radford submits that the right to good administration which is enshrined in European Law includes the protection of legitimate expectations. If the respondent's policy applies, Ms Radford submits, it would be a breach of the UK's obligations for her to depart from that policy without proper reasons, expressly stated, for doing so.

73. Had it been necessary to reach a conclusion on the extent to which the obligations in s84(3)(a) include the right to good administration as enshrined in Article 41, our view would have been that the provision (and the underlying right which it recognises) concerns the actions of the institutions, bodies, offices and agencies of the Union. It is not addressed to or concerned with the actions of the Member States: YS v Minister voor Immigratie, Integratie en Asiel (C-141/12); [2015] 1 CMLR 18, at [67], and MC v Ufficio territoriale del governo (U.T.G.) – Prefettura di Foggia *(C-17/20)*, at [27]. We note in that connection that the decision in Schindler Holding concerned the actions of the European Commission, which is undoubtedly one of the bodies of the Union to which Article 41 relates.

74. The reason that it is not necessary to consider the breadth of the obligations in s84(3)(a) is because the difficulty with Ms Radford's argument lies in the remaining words of that sub-section. The obligations in question are those owed 'to persons eligible for a grant of humanitarian protection'.

75. The effect of Article 2(e) of the QD is that a person to whom Articles 17(1) and (2) apply is not a person who is eligible for subsidiary protection. By its mandatory 'shall', Article 19(3)(a) requires a Member State to revoke the subsidiary protection status of an individual upon his being 'excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2)'.

76. The effect of paragraphs 339G of the Immigration Rules, read with paragraph 339GB(iii) and (iv) is identical to the effect of those provisions of the QD. By its mandatory 'will', paragraph 339G requires the Secretary of State to revoke humanitarian protection granted under paragraph 339C if either paragraph 339GA or paragraph 339GB applies.

77. The natural reading of the scheme created by the QD and the Immigration Rules is therefore that a person who has committed a serious crime or who represents a danger to the community is not a person who is eligible for a grant of subsidiary or humanitarian protection.

78. Ms Radford did not accept that analysis. She submitted, as we understood her, that the UK owes the obligations in s84(3)(a) to a person who has been granted humanitarian protection, and that such a person remains 'eligible' for a grant of humanitarian protection precisely (and merely) because they have been granted it. In support of that submission, Ms Radford relied on s82(2)(d) of the 2002 Act, which requires that the term 'humanitarian protection' is to be construed in accordance with the Immigration Rules, and on paragraph 6 of the Rules, which defines 'humanitarian protection' as 'limited leave granted pursuant to paragraph 339C of these Rules and has not been revoked pursuant to paragraph 339G or 339H'. An individual such as the appellant therefore remains eligible for humanitarian protection, she submitted, until that status had been revoked pursuant to paragraph 339G or 339H. Ms Radford submitted that the respondent's obligations of good administration applied whilst revocation was under consideration.

79. We reject that submission, which fails to take account of the Immigration Rules as a whole. Section 82(2)(d) requires that humanitarian protection is to be construed in accordance with the Immigration Rules, not only in accordance with paragraph 6 of the Rules. Read as a whole, the Rules operate exactly as the Directive does. An individual is not eligible for subsidiary protection if he is excluded from it under Article 17. An individual who has been granted subsidiary protection status is no longer eligible for that status when, *inter alia*, he has committed a serious crime. In an appeal against the revocation of humanitarian protection, as in an appeal against the refusal of humanitarian protection status, the first question is therefore whether the individual is eligible for that status. An individual who falls to be excluded is not eligible for a grant of that status and is not a person to whom any relevant obligations are owed.

80. The respondent therefore establishes both of her grounds of appeal. We find that the FtT erred in its conclusion that the policy created a legitimate expectation that the respondent had adopted an approach to revocation which was more generous than the QD or the Immigration Rules. And we find that the FtT had no jurisdiction to bring any such legitimate expectation to bear in an appeal under s84(3) in any event.

81. The consequence of these conclusions is that the policy point which was developed by the FtT of its own volition and without any argument from the parties was not only a frolic; it was a red herring. The FtT concluded that the appellant had committed a serious crime. Whether or not he was

a danger to the community of the UK (and the FtT obviously concluded that he was not), he was not a person who was eligible for a grant of humanitarian protection because he had committed such a crime. His appeal fell to be dismissed on the ground of appeal in s84(3)(b) as a result. We therefore allow the respondent's appeal and substitute a decision dismissing the appeal on that ground.

82. It remains to consider Ms Radford's application to 'revive' the asylum ground of appeal. As we noted at the very start of this decision, it is clear that the appellant's solicitors raised the Refugee Convention in form IAFT-5. They were obviously entitled to do so, since that is an available ground under s84(3)(a). In her written and oral argument before the FtT, however, Ms Radford relied solely on the humanitarian protection ground of appeal in s84(3)(b). In making *only* that submission, and in submitting that the appellant was eligible for subsidiary protection, Ms Radford *must* be taken to have accepted before the FtT that the appellant did not qualify as a refugee. That is quite clear from Article 2 of the Qualification Directive, which provides that it is only those who do not qualify as refugees who are eligible for subsidiary protection.

83. It has now been established that the appellant is ineligible for humanitarian protection, not because he is a refugee but because he has committed a serious crime which disentitles him to subsidiary protection. It is in these circumstances that Ms Radford now seeks to rely on the Refugee Convention ground of appeal in s84(3)(a). She maintains in her rule 24 response to the grounds of appeal that the appellant would be at risk on return to Iraq on account of his ethnicity, his faith and his Westernisation.

84. We are surprised that the Refugee Convention ground was not relied upon before the FtT, although we accept that the respondent's amendment of her stance before the FtT might have resulted in a lack of focus on what was properly in issue. In the circumstances, and given the pragmatic stance adopted by Mr Deller, we consider that the appellant should have an opportunity to argue the Refugee Convention ground upon which he originally relied, which is perhaps arguable, bearing in mind what was said in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC). The appeal will be remitted for consideration on that ground alone. There has been no challenge to the findings that the appellant's crime was a serious one and that he represents no danger to the community of the UK and the remitted hearing does not provide an opportunity for reviving those issues.

Notice of Decision

The Secretary of State's appeal is allowed. We set aside the decision of the FtT to allow the appellant's appeal on humanitarian protection grounds. We substitute a decision dismissing the appeal on that ground. The appeal is remitted to the FtT to consider the Refugee Convention ground of appeal.

No anonymity direction was sought or made

13 August 2021

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber