Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00032/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 December 2021	**On 16 December 2021**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FA
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr D Furner, instructed by Birnberg Peirce & Partners

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. This is an appeal against the decision issued on 30 March 2021 of First-tier Tribunal Judge Landes. The decision of the First-tier Tribunal allowed FA's appeal on Article 3 and Article 8 ECHR grounds.

2. In this decision I refer to the Secretary of State for the Home Department as the respondent and to FA as the appellant, reflecting their positions before the First-tier Tribunal.

3. FA is a national of DRC, born in 1989. He is 32 years old. He came to the United Kingdom in 1992 at the age of 3 years' old. On 8 May 2001 he was granted indefinite leave to remain (ILR) as the dependant of a refugee, his father having been found to be a refugee.

4. It is undisputed that the appellant has a very serious criminal history. The index offence is that of possession with intent to supply Class A drugs for which he received a sentence of four years' imprisonment in a Youth Offender's Institution on 2 November 2009. His full forensic history which includes other offences and suspected involvement with a criminal gang is set out in paragraphs 31 to 47 of the First-tier Tribunal decision.

5. In July 2014 the appellant was notified that he was liable for deportation and in June 2016 was issued with a decision to deport and a notification of the respondent's intention to cease his refugee status.

6. On 6 February 2018 the respondent applied a certificate made under Section 72 of Nationality, Immigration and Asylum Act 2002 (the 2002 Act) to the appellant's refugee status. The respondent also made a decision to cease his refugee status and refused his human rights claim.

7. The appellant appealed to the First-tier Tribunal. In a decision dated 22 November 2018 First-tier Tribunal Bart-Stewart did not uphold the s.72 certificate but found that the respondent was entitled to cease the appellant's refugee status under Article 1C(v) of the Refugee Convention. The First-tier Tribunal also found that the appellant would not be at risk on return to DRC as a result of his offending in the UK or as a result of his father's political activities. The appeal was allowed under Article 3 ECHR on the basis that there would be a risk of destitution if the appellant were returned to DRC and also on Article 8 ECHR grounds as it was found that very compelling circumstances had been shown capable of outweighing the public interest in deportation.

8. The Secretary of State was granted permission to appeal the decision of First-tier Tribunal Judge Bart-Stewart to the Upper Tribunal. The appellant also sought to cross appeal the decision to cease refugee status but was refused permission.

9. In a decision dated 3 June 2019 the Upper Tribunal found an error of law in the decision of First-tier Tribunal Bart-Stewart and remitted it to the First-tier Tribunal to be remade. That led to the decision dated 30 March 2021 of First-tier Tribunal Judge Landes challenged here.

Grant of Permission to Appeal to the Upper Tribunal

10. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Froom in a decision dated 4 May 2021. The permission decision is curious in a number of regards. Firstly, in paragraph 2 it refers to the respondent's written grounds dated 1 April 2021 but otherwise does not address those grounds at all. Secondly, in paragraphs 3, 4 and 5, the permission judge raised, of his own accord, grounds which did not feature in the Secretary of State's application for permission and granted permission on those grounds. The grounds raised by the judge were that s. 84(3) of the 2002 Act restricted the grounds of appeal available and that human rights was not arguable before the First-tier Tribunal. They also stated that the appellant had never had refugee status. The implication of this would appear to be that the permission judge was concerned that the First-tier Tribunal had not had jurisdiction in relation to the s.72 certificate or cessation of refugee status.

11. I was grateful to Ms Cunha and Mr Furner for their straightforward approach to the grant of permission to appeal. They were in agreement that the grounds raised by the First-tier Tribunal judge were misconceived. The respondent had refused the appellant's human rights claim in the decision dated 6 February 2018 and the First-tier Tribunal unarguably had jurisdiction to decide a human rights appeal brought against that decision. The parties were also in agreement that even if there were a jurisdictional issue concerning the appellant being a dependent of a refugee rather than a refugee, it was immaterial as any issues concerning the appellant's refugee status or dependent status were no longer live.

12. I was in agreement with the approach taken by the parties. The grounds raised by the permission judge were not capable of showing a material error of law in the decision of Judge Landes and did not meet the criteria for granting permission on grounds not raised by a party set out in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC). The grounds set out on the face of the grant of permission to appeal do not have merit.

13. Mr Furner made a further submission concerning the grant of permission to appeal. He maintained that the decision of Judge Froom did not state that permission was granted on the respondent's written grounds dated 1 April 2021. That was an indication that permission had not been granted. The respondent was therefore required to renew an application to the Upper Tribunal to obtain permission on those grounds. She had not done so and there were therefore no extant grounds before me.

14. Mr Furner was correct to state that the permission decision of the First-tier Tribunal does not overtly grant permission on the respondent's grounds. It does not overtly refuse permission, either, however. The case of Safi and others (permission to appeal decisions) [2018] UKUT 00388 indicates that where that is so, permission should be taken to have been granted on all

grounds. I indicated that in my judgment permission had been granted on the respondent's written grounds where it had not been expressly refused.

Discussion

15. The respondent's grounds dated 1 April 2021 set out one ground which was stated to be "Failing to give adequate reasons for findings on a material matter". R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982 sets out in paragraph 90

> "A decision should not be set aside for inadequacy of reasons unless the adjudicator failed to identify and record the matters that were critical to his decision on material issues, in such a way that the IAT was unable to understand why he reached that decision."

16. It is not arguable that the decision of Judge Landes failed to identify or record any matter critical to the assessment of the appellant's Article 3 and Article 8 ECHR claims such that the respondent or anyone else reading the decision could be unclear as to why the appeal was allowed.

17. The judge's assessment of the appellant's Article 3 EHCR turned first to the question of whether he would be detained for more than a day on arrival. This assessment is set out in paragraphs 80 to 123 of the decision. Judge Landes took into account the respondent's Country Policy Information Note (CPIN) from January 2020 which acknowledged that detention conditions in DRC were such that detention for more than a day was likely to amount to conditions breaching Article 3 ECHR. In paragraph 87 the judge set out the four factors identified in the CPIN that might affect the length of questioning in detention on arrival and addressed those factors in the ensuing paragraphs. She identified in paragraph 93 that the appellant is without family or other contacts in DRC who might offer support as he went through arrival procedures. Her conclusion in paragraph 94 that the appellant would not be able to pay a bribe was detailed and rational. He was working but did not have savings. His family had no funds. It was manifestly open to the judge to find in paragraphs 95 and 96 that the appellant had "broken" Lingala, at best.

18. The judge went on in paragraphs 97 to 121 to consider the evidence on the appellant's mental health and how this might affect his conduct on return. She concluded that the appellant was likely to behave in a manner which was likely to lead to an extension of his detention and, therefore, to conditions amounting to a breach of Article 3 ECHR. That consideration took into account periods and events in the appellant's life when he conducted himself well, even when under pressure; see paragraphs 98, 99, 104, 107, 114, 119 and 120, for example. She took into account the respondent's submission that she should not accept the evidence of Dr Bell that the appellant would be unable to cope with the returns procedure in DRC; see paragraphs 116 and 119. The judge brought together her review of the evidence in paragraphs 117 to 123 and provided clear, detailed and rational reasons for finding that the appellant would not be able to control himself on return to DRC so as to leave detention within a

day, in addition to having no support in DRC not speaking Lingala well and not being able to pay a bribe.

19. At best the respondent's grounds in relation to this conclusion were disagreement or an attempt to reargue the case and were not capable of showing an error of law. The judge did not have to find that there was a recent violent outburst in order for her decision to be lawful as suggested in paragraph 2 of the written grounds. If the amount of the bribe to be paid was unclear, that did not oblige the judge to find that the appellant could pay it, another submission set out in paragraph 2 of the written grounds.

20. I did not find an error in the decision of the First-tier Tribunal that the appellant would face a breach of his rights under Article 3 ECHR immediately on return to DRC. That means that the appellant must succeed under Article 3 ECHR but for completeness sake I have proceeded to address the other grounds.

21. The First-tier Tribunal also found that the appellant qualified for Article 3 ECHR leave on the basis of a combination of his mental health and conditions he would face on return. The judge set out her reasons for this conclusion in paragraphs 126 to 134 of the decision. In paragraph 126 she directed herself to the correct legal test from AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. In paragraph 127 she reminded herself of the respondent's submissions on the severity of the appellant's medical condition. In paragraphs 128 to 129 she considered the evidence of the country expert, Dr Kodi. His opinion was that the appellant would have to live on the streets in DRC, would be vulnerable to potentially brutal exploitation and that treatment for mental illness was extremely poor and that "the vast majority of people with mental health problems were left to fend for themselves". In paragraph 130 the judge accepted that the appellant would have to live on the street in DRC. In paragraphs 131 and 132 she assessed the medical evidence on the appellant's likely presentation in those circumstances. Part of that evidence indicated that the appellant would be so unwell that he would be unable to access treatment, even if it was available. The judge concluded in paragraph 133 that the appellant would be destitute and living with an untreated severe mental illness on return to DRC, setting out in detail the evidence she relied upon to reach that conclusion.

22. The respondent challenged this part of the First-tier Tribunal decision. Paragraph 8 of the written grounds submits only that the appellant failed to provide evidence demonstrating that his mental health would result in an Article 3 ECHR breach on return to DRC "particularly in respect to available treatment and medication". This was said to lead to the error of the judge failing to give adequate reasons for finding a breach of Article 3 ECHR. This ground is not arguable. The decision sets out in a significant amount of detail the medical evidence put forward by the appellant, the country evidence and the judge's reasons for concluding that the appellant's circumstances on return would breach Article 3 ECHR. This

ground is, at best, unparticularised disagreement and is not capable of showing an error on a point of law.

23. The grounds also maintain that the First-tier Tribunal gave inadequate reasons for finding that the appellant was socially and culturally integrated in the UK and that he would face very significant obstacles to reintegration in DRC. These grounds are also unparticularised, asserting error in general terms rather than engaging with the judge's reasons.

24. The conclusion on very significant obstacles to reintegration, set out in paragraphs 144 and 145 of the First-tier Tribunal decision, relied on the extensive findings made in the consideration of Article 3 ECHR. It is not arguable that the judge failed to give adequate reasons, therefore.

25. It is also not arguable that the judge failed to provide adequate reasons for finding that the appellant was socially and culturally integrated in the UK. The judge considers the appellant's social and cultural integration in paragraphs 138 to 143. In paragraphs 138 and 139 she set out the respondent's case which included reference to the case of Binbuga v Secretary of State for the Home Department [2019] EWCA Civ 551. Judge Landes summarised the appellant's submissions in paragraph 140. In paragraphs 141 and 142 the judge made a correct legal self-direction to Binbuga and to CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027. In paragraph 143 she took into account the appellant's "significant periods of violent and antisocial, criminal offending" and his gang membership but found, nevertheless, that he remained socially and culturally integrated. It is not arguable that the respondent does not know why the judge found the appellant to be socially and culturally integrated. It is not arguable that she failed to have regard to his criminal behaviour when reaching her conclusion. It is not suggested that her reasoning was irrational.

26. Paragraphs 10 and 11 of the grounds maintain that the judge failed to have proper regard to the very high threshold required for a finding of very compelling circumstances and failed to have regard to the "wider" public interest. These grounds are again unparticularised, asserting error in general terms rather than engaging with the judge's reasons.

27. The judge's consideration of the compelling circumstances test is set out in paragraphs 146 to 158 of the decision. Judge Landes set out the respondent's case in paragraphs 146 to 149. That case included a submission that the very significant public interest in the appellant's deportation could only be met by "a very strong Article 8 claim". It is not arguable, therefore that the First-tier Tribunal was not aware of the high threshold that the appellant had to meet.

28. Further, nothing in what follows in the decision suggests that she did not keep that high threshold in mind. The judge set out in paragraph 152 why she accepted that there was a "very strong public interest" in the appellant's deportation because of his criminal behaviour. In paragraphs

153 to 155 she rejected submissions made for the appellant regarding a reduction to the public interest on the basis of delay and the appellant's sentence being only just over the 4 year threshold. She stated in paragraph 153 that the general public interest in deportation was not undermined by the delay in progressing deportation action and that the public interest in deterrence also weighed against the appellant. It is not arguable that she failed to address the "wider" public interest as suggested in the grounds. The conclusion in paragraphs 156 to 158 that the very compelling circumstances threshold was met notwithstanding the high public interest is clearly reasoned. The appellant had lived in the UK from the age of 3 years' old, was integrated, had no ties to DRC and faced conditions breaching Article 3 ECHR there on return.

29. For all of these reasons, I did not find an error in the decision of the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: S Pitt Date: 9 December 2021
Upper Tribunal Judge Pitt