IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002545

First-tier Tribunal No: RP/50002/2021
LR/00050/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18th November 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood, of the Immigration Advice Service.
For the Respondent: Miss Newton, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 5 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a decision promulgated following a hearing at Manchester on 27 August 2024 it was found a Judge of the First-tier Tribunal had erred in law in allowing the appellant's appeal against the Secretary of State's decision dated 30 November 2022 to revoke BA's refugee status, pursuant to paragraph 339AC of the Immigration Rules, for the reasons stated.

2. BA is a citizen of Iran who the Secretary of State does not intend to remove from the UK in any event, as it was accepted to do so will breach his rights pursuant to Article 3 ECHR.
3. The appellant's immigration history is recorded by the First-tier Tribunal as follows:

    3. On 19 December 2011, the appellant was encountered by the police and claimed asylum. On 16 February 2012, his claim was refused. However, he was granted leave to remain as an unaccompanied minor until 23 June 2013. The appellant appealed against the decision to refuse asylum and his appeal was dismissed on 6 June 2012. On 17 September 2012, the appellant was granted permission to appeal to the Upper Tribunal. On 24 January 2013, in light of representations made on the appellant's behalf, the respondent withdrew the decision to refuse asylum. On 14 May 2014, the appellant was granted asylum and leave to remain until 13 May 2019. I note that there is no dispute that the appellant has not successfully renewed his leave to remain since the expiry in 2019.

    4. On 17 January 2019, at Isleworth Crown Court, the appellant was convicted of possession with intent to supply of a controlled drug of Class A (cocaine) and possession with intent to supply of a controlled drug of Class B (cannabis), for which he was sentenced on 28 February 2019 to a total of 40 months' imprisonment. This comprised 40 months' imprisonment for the Class A offence and 10 months' imprisonment concurrent for the Class B offence.

4. The scope of this hearing relates to the Secretary of States position that pursuant to section 72 Nationality, Immigration and Asylum Act 2002, the appellant is excluded from the protection of the Refugee Convention and on Humanitarian protection grounds.
5. At [14 – 18] of the Notification of Intention to Revoke Refugee Status letter dated 22 July 2020 it is written:

    14. Consideration is given to whether you have been convicted of a particularly serious crime. The Judge in his sentencing remarks acknowledged that your offence was so serious that only an immediate custodial sentence was appropriate and the sentence he imposed on you reflects this. You were convicted of possession with intent to supply cannabis and possession with intent to supply cocaine. Class A Drugs, are capable of causing severe harm to the health of those who use them. By the very nature of your offence you were involved in a crime that preyed upon the vulnerability of those who had an addiction of these drugs and you had no regard for the impact these drugs have on the fundamental interests of society. You were sentenced to 40 months imprisonment. This is noted to be in excess of the two year threshold set by section 72 of the NIA 2002 for your crime to be considered particularly serious. It is therefore clear that you have been convicted of a particularly serious crime.

    15. Consideration is given to whether you present a danger to the community of the United Kingdom. It is noted that you have provided no evidence to show that you have made efforts to reform yourself. Furthermore, your crime was considered to be so serious involving the possession with intent to supply of Class A drug, cocaine in addition to the intent to supply cannabis. It is considered that even a low risk of repetition of this sort of offence poses an unacceptable risk of danger to the community in the United Kingdom.

    16. In view of the above, it is not accepted that you have rebutted the presumption that you have been convicted of a particularly serious crime and are a danger to the UK community.

    17. It is therefore concluded that you have been convicted of a final judgement of a particularly serious crime and that you constitute a danger to the community of the UK.

> 18. In light of the above, the Secretary of State is proposing to revoke your refugee status prior to Paragraph 399AC because she is satisfied that, subsequent to obtaining refugee status, your conduct is so serious that it warrants the revocation of your refugee status.

6. That letter was served upon the appellant on 3 August 2020 providing him with an opportunity to submit representations with any reason why his refugee status should not be revoked. In the formal Revocation of Refugee Status letter dated the 30 November 2020, advising the appellant his refugee status granted on 14 May 2014 had been revoked, it is recorded that no further representations were forthcoming.
7. There is reference in the revocation letter to submissions from UNHCR which were taken into account.
8. At [16] of the revocation letter it is written:

> 16. However, although your refugee status is to be revoked, consideration of your personal circumstances identified that at this point in time there is a potential breach of your rights under Article 3 of the ECHR.

9. The lack of removal action was also confirmed at [20].
10. All documentary evidence and submissions filed in support of the appellant's case that he should not be excluded pursuant to section 72 have been considered.

The law, evidence, and submissions

11. Section 72 of the 2002 Act has been considered in a number of decisions by the Upper Tribunal and the Court of Appeal.
12. In IH (s.72; 'Particularly Serious Crime') Eritrea [2009] UKAIT 00012 a panel of the Upper Tribunal found that the presumption in section 72 that in the circumstances specified a person had been convicted by a final judgement of a "particularly serious crime" for the purposes of Art 33(2) of the Refugee Convention if read as a rebuttable are inconsistent with Art 21.2 of the EU Qualification Directive (Council Directive 2004/83/EC) which gives effect to the autonomous international meaning of Art 33(2) as part of EU law. As a consequence, the presumption in s.72 must be read as being rebuttable.
13. The position following the withdrawal of the UK from the European Union was considered by the Upper Tribunal in the recent decision of SM (Article 33 (2); Section 72; Essa post-EU exit) [2024] UKUT 00323 (IAC) which was promulgated on 27 August 2024, the head note of which reads:

> 1.The broad principles identified in Essa (Revocation of protection status appeals) [2018] UKUT 00244 (IAC) continue to apply to decisions made post-EU exit. The immigration rules continue to refer to 'revocation' of leave to remain as a refugee in similar terms and the terminology used in sections 82 and 84 of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002') currently remain the same.
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> 2. Post-EU exit, a grant of leave to remain as a refugee no longer acts as a grant of European Refugee Status, but is an act done under domestic law because a person meets the requirements of paragraph 334 of the immigration rules to be recognised as a refugee.
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> 3. Post-EU exit, a decision to 'revoke' leave to remain as a refugee is no longer a decision giving effect to Article 14 of the Qualification Directive, but an act done under domestic law to remove the mechanism by which a person's Convention Refugee Status under international law is recognised under domestic law.
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> 4. Where leave to remain as a refugee is revoked solely with reference to section 72 NIAA 2002, and the cessation or exclusion clauses have not been applied, the

dismissal of the appeal with reference to section 72(10) is unlikely to be problematic because it is likely that the person continues to have Convention Refugee Status.

5. The situation might be different where the decision to revoke a person's leave to remain as a refugee with reference to section 72 NIAA 2002 is made in conjunction with a decision to cease or exclude a person from Convention Refugee Status. The application of section 72(10) NIAA 2002 is a technical mechanism requiring the appeal to be dismissed without affording the person an adequate opportunity to determine whether their Convention Refugee Status continues with reference to the relevant ground of appeal contained in section 84(3).

6. In appeals involving decisions to revoke protection status on the ground that the person has ceased to be or is excluded from refugee status, and where a person has failed to rebut the presumption that they are a danger to the community under section 72 NIAA 2002, findings of fact still need to be made to determine whether the person has Convention Refugee Status. This might need to be done to give effect to any rights and benefits still conferred by the Convention to a 'removable refugee' pending their removal from the UK. To this extent, it is material to a proper determination of the relevant ground of appeal relating to the Refugee Convention even if the overall outcome of the appeal is determined by operation of statute.

14. The Revocation of Refugee Status letter dated 30 November 2022 refers to the appellant's criminality and section 72 but would not establish that the appellant is no longer a refugee unless one of the specified circumstances set out in the cessation clauses contained in Article 1C of the Refugee Convention applied.
15. Article 1C(5) and (6) provides that the 1951 Convention shall cease to apply to any person falling under the terms of Article 1(A) if:

> (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
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> (6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

16. Whilst there is reference to section 72 in the revocation letter, there is no specific reference to Article 1C or to show how the cessation clauses are met on the facts.
17. It is unarguable that the appellant has been convicted by a final judgement of a particular serious crime. The nature of the conviction is set out above. In her sentencing remarks He Honour Judge Holt, sitting at the Isleworth Crown Court on 28 February 2019, stated:

> You are now aged 23. You have been committed to sentence to this Court on two charges: possession with intent to supply cannabis and possession with intent to supply cocaine.
>
> At an earlier hearing it was decided that a Newton Hearing would be required because the Crown maintained, as they always have, that your role was significant and there appeared to be a dispute as to whether your role was indeed significant, or if the basis of plea were to be accepted it would be clearly to a lesser role. So,

the matter comes before me today for resolution by way of a Newton Hearing. Counsel have had the opportunity to discuss the matter at some length, with the assistance of the officer in the case, and importantly Mr Krikler has made two concessions, both of which I have been told were not discussed on the earlier occasion. Mainly that there was no evidence of you dealing directly and although it was accepted that your role reflected the trust street dealers had with you by leaving their phones, you knowing what they were, it cannot be said that you sent any of the messages that were clearly really drug related. In those circumstances, agreement has been reached and it is now accepted that your role is significant and therefore no Newton Hearing is required. In the circumstances this will not impact on you receiving full credit and that is what I will give you for your plea.

Briefly dealing with facts: this case was part of Operation Buxton, which targeted dealing in the Hounslow area, most particularly the Kingsley Road/bus station area, close to the address that you resided at.

Officers with a Section 23 warrant attended your address at The Drive in Hounslow on Wednesday 21st February of last year. There was intelligence that your property was being used to store a large quantity of drugs, clearly a place of sanctity in order for street dealers to come and collect from and to deal in the nearby High Street. Officers entered your property at 6 o'clock in the evening. You were found near the back door of the house. Items were discovered in your property. You were found in possession of two mobile phones - I have already dealt with the Crown's concession as far as those are concerned - clearly important phones and you were trusted with them, although you did not actually use them. The drugs were recovered from the front bedroom.

Dealing with a skunk cannabis first: DMC1 was 49 bags, weighing a total of 67.6 g, under weight [?] to 2g deals with a value of £980. DMC2, 64 bags, with the weight of 51.9g, under weight to 1g deals with a valuation of £640, making a total value of skunk cannabis seized from your address of £1,620.

The cocaine was found in the top drawer of a fridge within the room. There were a number of wraps available. Total value I am told as far as the cocaine - £3,740.

Mr Krikler, is that the total value of the cocaine or just the cocaine in the fridge?

Mr Krikler (on behalf the prosecution) : that is a total value of the cocaine. The overall value as far as the drugs are concerned is £5,360.

Judge Holt: Thank you. There was also cocaine found in the wardrobe in a suitcase. As I said the total value being £3,740, making a total value of all drugs seized £5,360. In that suitcase was your passport. A large quantity of empty, unused snap-bags and digital scales were also seized, as well as a book on the bed which contained a list of names and what appears to be quantities. The Crown asks for, and I grant, forfeiture and destruction of all drugs, drug paraphernalia seized and the two phones; DNA1 and DNA2.

No comment was made by you in interview. As far as the guidelines are concerned, it is now agreed that this is a significant role Category 3 case. Quite clearly, you had an awareness, some awareness, and understanding of the scale of the operation with the role I have already indicated. An important critical role for effective street dealing of these dangerous drugs to take place.

Therefore, the starting point so far as the cocaine is concerned – Class A - would be 4 ½ years, with a category range of 3 ½ years through to 7 years. I make it clear, if it had not been made clear before, that it is accepted on behalf of the Crown and that there is no evidence to show you dealing directly. That was not your role in this enterprise.

There is, however, in my view a very serious aggravating factor. Although you are still a relatively young man you only have one previous conviction recorded against you. But that was at this Court for possession with intent to supply a Class B drug; cannabis resin. You were seen dealing in cannabis on the street in Hounslow. You

received an eight-month term in a young offender institution and within two years of that you have committed these further offences, escalating now to include Class A, cocaine. I have listened carefully to everything your counsel has said. I have read the short format presentence report.

You clearly had a difficult start to life: you left your parents in Iran and was smuggled into this country. You have worked periodically, and I am told you have leave to remain until May of this year. Apparently, so I am told, your mother has cancer and you send money to her. You, yourself, have a shoulder injury and I have seen paperwork from Chelsea and Westminster hospital confirming that aspect.

Clearly, the offence is so serious that only an immediate custodial sentence is appropriate. The lowest sentence that I can impose in all the circumstances, taking into account everything your counsel has said and the full credit for plea, but commensurate with my public duty is as follows: in relation to the possession with intent to supply cannabis, there will be a sentence of 10 months imprisonment. In relation to the possession with intent to supply cocaine, there will be a sentence of 40 months imprisonment. These two sentences will run, mindful of totality, concurrently, making a total of 40 months imprisonment. Now, unless released earlier under supervision, you will serve half that sentence in custody.

However, upon release your sentence will continue, as of course you know, having been released from your earlier sentence. You remain on licence and subject to those important conditions. Victim surcharge is £170.

18. The harm caused by drugs to society is recognised in both domestic and European law. A publication by the National Audit Office behalf of the Home Office providing a report on reducing the harm from illegal drugs, dated 23 October 2023, in its summary section stated:

> 1 The distribution, sale and consumption of illegal drugs causes significant harm to individuals, families and communities. In 2021, almost 3,000 people in England died because of drug misuse and thousands more suffered complex health problems. The government also estimated that around three million people in England and Wales take illegal drugs at a cost to society of approximately £20 billion a year. The drugs trade generates significant levels of violence and is believed to be responsible for around half of all murders in England and Wales.
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> 2 Tackling the problems caused by illegal drugs is complex. It involves disrupting the organised gangs which supply and distribute drugs, and providing effective treatment and recovery services to help people with addictions. Central and local government bodies are involved, ranging from police and law enforcement agencies, who seek to disrupt organised crime, to local authorities and service providers, who offer treatment and support to people with a drug addiction. The Home Office leads on UK drug legislation, UK borders and organised crime, policing and crime reduction in England and Wales. The Department of Health & Social Care (DHSC) is responsible for overseeing the substance misuse treatment and recovery sector.
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> 3 Illegal drugs are not a new problem. Successive governments have sought to reduce the supply of drugs and lessen their impact on individuals and society. Despite these efforts, the government recognised that the situation was deteriorating, with deaths related to drug misuse increasing by 80% between 2011 and 2021. The Home Office and DHSC therefore asked Dame Carol Black to undertake an independent review to inform government's thinking on what more could be done to tackle the harms from illegal drugs. In July 2021, Dame Carol concluded that "the current situation is intolerable" and "the public provision we currently have for prevention, treatment and recovery is not fit for purpose, and urgently needs repair". In response to Dame Carol's recommendations, the government published a new 10-year drugs strategy – From harm to hope – (the strategy) in December 2021. The strategy focuses on breaking drug supply chains, creating a "world class treatment and recovery system" and achieving a "generational shift" in the demand for illegal drugs. The government announced a

> £900 million increase in funding for 2022-23 to 2024-25 and committed to long-term targets to reduce drug use and drug-related crime and deaths. The government established the cross-government Joint Combating Drugs Unit (JCDU) to co-ordinate and oversee the development and implementation of the strategy. In addition to the Home Office and DHSC, the other departments involved are the Ministry of Justice (MoJ), the Department for Work & Pensions (DWP), the Department for Levelling Up, Housing & Communities (DLUHC), and the Department for Education (DfE).

19. I find the Secretary of State's conclusion the appellant has been convicted by a final judgement of a particularly serious crime within the UK to be a rational and lawful conclusion.
20. The focus of the evidence and submissions has been upon section 72 (5) of the 2002 Act which states that a person convicted by a final judgement of a particularly serious crime (whether within or outside the United Kingdom), is to be presumed to constitute a danger to the community of the United Kingdom, and section 72(6) which states the presumption that a person constitutes a danger to the community is rebuttable by that person.
21. The appellant's position is set out in Mr Wood's skeleton argument dated 24 September 2024 in the following terms:

> Appellant's submissions
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> 9. The Respondent has confirmed to the Probation Service that the Appellant has an outstanding application for leave to remain and that he is not currently subject to any deportation action (AB 48).
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> 10.It is therefore submitted that the Appellant's appeal concerns the provisions of S.72 of the Nationality and Immigration Act 2002 assessing whether he had rebutted the presumption that he constitutes a danger to the community. The Upper Tribunal does not need to engage in the broader consideration of factors applicable to a deportation appeal.
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> 11.The Appellant has completed his criminal sentence on 27 June 2022. Since his release from prison and the expiry of his period of probation on 27 June 2022 the Appellant has not reoffended. The Respondent advances no evidence to the contrary. It is therefore submitted that by not reoffending the Appellant has in part demonstrated that he is reformed from his previous criminality and does not constitute a danger to the community.
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> 12.The Appellant relies upon the contents of OASys report which states that there is a low risk of serious reoffending over the next two years (AB 8, 33, 35 and 36). The report links that Appellant's criminality to his loss of accommodation and destitution (AB 19 and 23), he now has his own accommodation in Wigan and has employment thus removing risk factors to an reoffending (AB 15 and 16).
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> 13.In Mugagwa v SSHD (section 72 – applying statutory presumptions) Zimbabwe [2011] UKUT 00338 (IAC), the contents of an OASys report which reflected a low risk of reoffending were held to be sufficient to rebut the s.72 presumption (see [34]-[36]).
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> 14.The Appellant has expressed remorse for his offending and does not want to be sent to prison again for criminal activity. It is submitted that this is further evidence of his rehabilitation.
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> 15.The Appellant has removed himself from the accommodation and area of the UK which was the location of his offending. The Appellant now lives in Wigan and is gainfully employed. It is submitted that that this is evidence of the Appellant breaking from his former criminal past and additional indication of his rehabilitation.
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> 16.The OASys report reflects that the Appellant engaged with the Probation Service to address issues that were likely to lead him to offend again (AB 25, 39 and 41). It

records that he had a good understanding of the impact of his previous actions (AB 39).

17.Therefore prima facie the Appellant does not constitute a danger to the community of the UK.

18.The Tribunal is invited to positively resolve the issue in appeal in the Appellant's favour and allow his appeal.

22. In his witness statement dated 24 September 2024 appellant confirmed he is not married and has no children, that after his release from prison on 27 October 2020 he completed his period of probation on 27 June 2022, that he has moved away from the area where he had found himself in trouble, that he does not want to go to prison again and states he has learned his lesson not to break the law and is sorry for what he did, and that he has found employment in Wigan.
23. The appellant's case has always been that he committed the offences at a time when he had no employment or accommodation in return for being provided with a room in which he could live.
24. Although it is noted the appellant no longer lives in London, having moved up to the north-west of England, that is also an area of the UK with serious drug-related issues. It may be when he has employment and has money in his pocket, he may not feel the need to engage in dealing or assisting in the dealing of illicit drugs, but the fact is that he did so previously when he believed there was an economic benefit for him which may represent a reflection of his state of mind and thought processes. If he found himself without employment in the north-west, is he likely to revert to the easy way out of becoming involved in the illicit drug trade as he did in the past, and the serious harm that may result to society in general as well as individual drug users?
25. I find the appellant's claims to have moved to another part of the country and to have secured employment do not, of themselves, amount to sufficient evidence to find that the presumption has been rebutted.
26. There is, however, in addition the fact there is no evidence of re-offending and further evidence provided by the appellant by way of an OASys assessment dated 21 August 2024.
27. In Section 2.1, providing an analysis of the offences, it is written:

> "BA explained his offending in the context that he lost his accommodation and support from Hounslow Leaving Care Team when he travelled to Iraq and abandoned his flat for 5 weeks. He said the plan was to meet up with family in Iraq who would have travelled there from Iran. He said this did not materialise. He said he became destitute on his return to the UK. He told me that some people he knew from the streets told him that they could provide him with a room in exchange for him selling the drugs on the streets."

28. The author of report records that the appellant recognises the impact and consequences of offending on victims, community and wider society, but also notes in relation to pattern of offending, that he was sentenced to 8 months in a Young Offenders institute in 2016 for possession with intent to supply Class B – cannabis and that the circumstances surrounding his previous offence was similar to his current offence as he got involved with drug dealing when he became homeless, and that the offence for which he was sentenced which is under discussion in this appeal is an escalation, as he has gone from dealing Class B to Class A and B in his index offence.
29. In the section of the report headed 'Identify offence analysis issues contributing to risk of offending and harm. Please include any positive factors.' It is written:

> BA is two offences of possession with intent to supply drugs. In both offences BA said that he was homeless and he was offered a room in return for selling drugs.

> Although BA knew this could be wrong, he felt it was his best option at the time. BA's only education has come from the prison system where he has learnt to read and write in English although his spelling is poor. Due to his lack of formal education he only has access to menial jobs, so when he was unable to work due to a shoulder injury he soon became homeless. BA believes that lack of accommodation is his greatest risk factor when it comes to reoffending and also those would seek to exploit this for their own purposes i.e. Getting him to sell their drugs.

30. This passage highlights the concerns of the Secretary of State that even though the appellant knew what he was doing was wrong, as that would have been clear from his original conviction and sentence to a period of detention in a Young Offenders institute, he thought getting involved in drug dealing appeared to be his best option, as a result of which he elected to follow that route with no indication that he gave proper regard to the consequences of his actions.
31. In relation to section 3.6, where the author is asked to identify accommodation issues contributing to the risk of offending and harm it is written:

> BA was arrested in the house he was sharing with five others in Hounslow. He told me that he had been offered a room in return for dealing drugs on the streets of Hounslow. When interviewed BA as self identified accommodation is a major risk factor in relation to his likelihood of reoffending. He also said that he was concerned about the individuals who had exploited his vulnerability that she was homeless to use him to sell drugs on the streets of Hounslow.
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> Accommodation issues are linked to his offending in light of him being offered accommodation and financial support for dealing drugs for others in the index offence. Work continues to secure more permanent accommodation for BA.
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> Termination
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> BA is currently living in a privately rented flat in [redacted]. There are no issues with accommodation as it seems suitable for him however as this is a privately rented property if he is to lose employment and income you may not be able to pay for the rent. For now while BA is in employment than the property is suitable for him.

32. Accommodation issues are found to be linked to offending behaviour in the report.
33. A further positive note is recorded in section 4.10 of the report in the following terms:

> "BA is currently working part-time on an off-licence stall on the Wigan market. He did recently lose your job at the car wash but it did not take long for him to find employment showing he was motivated to get back into employment. BA's new job is more suitable for him as she stated it only takes him five minutes to walk to his place of work. If BA was to lose his employment this will have a severe impact on him as she could end up losing his accommodation."

34. This section of the report also records that education/training/employability issues are linked to BA's offending behaviour.
35. In Section 5.6 of the report, the section entitled 'Identify financial management issues contributing to risk of offending and harm. Please identify any positive factors' it is written:

> He is now in receipt of Universal Credit.
>
> He currently has no source of income and is being supported by his friend who is also providing accommodation. Clarification is being sought from the HOIE regarding his immigration status and eligibility to claim public funds. He previously had refugee status. Finance issues are directly linked to his offending as he sought support from a criminal group in return for dealing drugs in the community. He is at risk of further offending if he continues to experience poor finances with no legitimate source of income. He has retained his Refugee and is entitled to claim state benefits such as Universal Credit.

Termination

BA's financials seems to be stable at the moment, it has a part-time job providing him income to pay his rent, just not seem to have any issues with his financials that he was to lose employment teeth would have issues as when he lost his job properly he could not get benefits as his immigration status is in question with the Home Office.

36. Financial issues are linked to offending behaviour.
37. In Section.7.5 headed 'Identify lifestyle issues contributing to risk of offending and harm. Please include any positive factors' it is written:

BA by his own admission knew people from the streets who were involved in drug dealing. He told me that they offered him a room if he sold their drugs on the streets. BA told me that he knew what he was doing was wrong and that there will be consequences that he said that he didn't think they would be as severe as they were.

It seems that he has weighed up his options and assessed the risk was worth it but now that he is better informed he is decided it wasn't.

Termination

BA currently has no problems with his lifestyle and associates from supervision with his previous offender managers he seems not to be involved with any people involved in criminal behaviours and seems like he does not engage in criminal activities. He seems to be living a stable life at the moment and is not influenced by other offending people or behaviours. However he could be easily manipulated in the future if his situation was to change and he found himself homeless and unemployed.

38. The appellant's lifestyle and associates are said to be linked to offending behaviour.
39. In Section 11.10 headed 'Identify thinking/behavioural issues contributing to risk of offending and harm. Please include any positive factors.' It is written:

Both BA's offences were committed as a result of finding himself homeless. BA appeared not to have learnt from his previous experience and thought about what might happen if he found himself in a similar position again. Increasing positive factors such as his employability by raising his skill and education level he might be able to put some protective factors in place to reduce his risk of reoffending. His offending indicates poor problem-solving and a lack of recognition of the consequences of his offending if not addressed will predispose him to further offending he appears highly motivated to improve his situation and engaging with supervision objectives.

Termination

BA seems to have worked on his problem-solving skills as she was able to sort out his own accommodation when he found himself living at the car wash, he found himself a new job at the Wigan market when he lost his employment proving that instead of going back to offending behaviour he was able to solve his problems more efficiently. He seems to of engaged with previous offender manager to target poor problem-solving and consequential thinking.

40. In section 12.9 headed 'Identify issues about attitudes contributing to risk of offending and harm. Please identify any positive factors' it is written:

He does not display any overt criminal attitude. However his offending behaviour indicates a disregard for the rule of law and reverting to criminality to solve his financial situation. He has shown genuine remorse and accepts full responsibility for his offending. He is also showing an awareness of the negative impact on his offending on victims and the community.

Termination

BA throughout his supervision seemed very motivated to address his offending behaviour there was no issues with his attitude to supervision while on probation and no problems with his attitude to address his motivation for his offending behaviour.

41. Attitudes are said to be linked to offending behaviour.
42. The Predictor Scores % and Risk Category assessment is stated to be as follows:

	1 year %	2 year %	Category
OGRS3 probability of proven offending	19	32	Low
OGP probability of proven non-violent offending	10	17	Low
OVP probability of proven violent type offending	7	13	Low
OSP Indecent Image Reoffending Risk	N/A	N/A	Not Applicable
OSP Contact Sexual Reoffending Risk	N/A	N/A	Not Applicable
Risk of Serious Recidivism (RSR)	N/A	0.41	Low (DYNAMIC)

43. In relation to the work carried out by the appellant during a period of supervision by the Probation Service it is recorded that the order will finish on 27 August 2022, that in that period the appellant had carried out working with probation supervision, addressed thinking skills, attitude and behaviour undermining offending. Work to reduce his risk of reoffending, improve his English skills to improve his work-related skills.
44. In relation to the completed objectives from the appellant's engagement with the Probation Service it is written:

Completed Objectives

Objective Description	**Status**
Increased understanding of likely consequences for self and others of offending	Fully achieved
Improved awareness of consequences of behaviour	Fully achieved
Increased employability	Fully achieved
Increased confidence/commitment to obtaining employment	Fully achieved
Increased awareness of own skills/impact on others	Fully achieved
Increased prospect of obtaining a suitable accommodation/to meet individual or family need	Fully achieved

45. The concerns of the Secretary of State in relation to the appellant's risk of further offending is demonstrated in a note appearing at the end of the OASys report recording a comment Foreign Nationals Unit in the following terms:

> 01/12/2022 - the Home Office of confirmed they are not actively seeking deportation for this case. The HOI flag is to remain active as changes in PoP's personal circumstances or any further offences may result in changes in the Home Office intentions to deport.

46. In her submissions Miss Newton referred to the escalation in the appellant's criminality, the fact that even though he had not committed further offences since his release it is because he would have known that he would have been recalled to prison, and that little weight should be given to his non-offending behaviour in the circumstances.
47. It was submitted that although rehabilitation may have been relevant that the appellant had not offended was not proof of rehabilitation. It was submitted there was no positive evidence of rehabilitation work being undertaken, which could have been useful in showing any reduced risk, but in this case no such evidence had been provided.
48. Miss Newton recognised the appellant was claiming he offended as a result of the need for accommodation but that his own account raises the fear of future manipulation if he is homeless by reference to the fact that instead of looking at lawful means to resolve his difficulties he turned to crime.
49. Mr Wood relied on his skeleton argument set out above, submitted the previous criminality related to loss of accommodation during the Covid pandemic and that it was relevant the appellant had taken himself away from the area where he committed the previous offences.
50. He submitted there is no evidence the appellant had turned to criminality since moving to the north-west, there was evidence the appellant has engaged in solving problems by seeking work, and it even if he had not attended any courses he had engaged with the Probation Service who recorded that he was motivated not to reoffend. It was submitted that his experience of working with the Probation Service was a strong indicator of the fact he had turned the page and was motivated to deal with his offending behaviour.
51. Mr Wood further submitted that Miss Newton's submission that the appellant had not reoffended as he had the "Sword of Damocles" hanging over him had to be tempered by the fact that the reality is that the appellant could not be removed from the UK as it was accepted to do so would be a breach his Article 3 rights.

Discussion and analysis

52. The relevant law is not disputed or challenged by either party. The issue is whether, as a question of fact, the appellant will re-offend in the future, for if there is sufficient evidence to show he is likely to do so he will not be able to rebut the presumption that he constitutes a danger to the community in the UK.
53. Factors which influence reoffending can, in themselves, be complex, being dependent in part upon an assessment of a subjective profile of the individual concerned. It is known, however, that common factors might include substance misuse problems, pro-criminal attitudes, difficult family backgrounds including experience of childhood abuse or time spent in care, unemployment and financial problems, homelessness and mental health problems.
54. It is not suggested the appellant himself as a substance misuse problem as he denies consuming excess alcohol or drugs in the OASys report and there is no evidence to suggest otherwise.

55. The appellant did spend time in a supported environment when he came to the UK, and there is an indication that when he thought his personal circumstances required such action, that he is demonstrated pro-criminal attitudes and a willingly to voluntarily undertake criminal activities in relation to drug offences rather than seeking a different approach, within the law, to resolve his difficulties.
56. The issue of unemployment and financial problems and homelessness are clearly at the core of the appellant's past issues, together with his thinking processes, and are relevant to this assessment.
57. The appellant claims that when he offended, he did not realise the consequences will be serious for him, but that is hard to understand when he had already served a period of detention in a Young Offenders Institute and will have been fully aware that getting involved in drugs and drug-related activities was likely to lead to a sentence of imprisonment. What the evidence shows is that the appellant, when contemplating whether to engage in illegal activities with his friends involved in the drug trade in his former home area, weighed up the consequences and made a judgement call that, on balance, the consequences were not so severe as to make it not worth his while doing what he did.
58. The appellant refers to homelessness but as a refugee with indefinite leave to remain he would have had access to support services if required with no indication that he sought such assistance rather than reverting to criminality.
59. There is no suggestion of mental health problems or any report from a psychiatrist or a criminal psychologist to assist.
60. The appellant's case is that he is motivated to change, will not offend in the future, and that he has accommodation and employment. The evidence as a whole suggests that while such a situation is maintained there is no evidence of anything other than a low risk of reoffending.
61. It is important to understand that low risk does not mean no risk, it means that if matters continue as they are at the moment the risk of reoffending is at the lowest level.
62. Mr Wood's submissions and the OASys report focuses upon the situation that exists at the current time. He asks me to assess the merits of the claim on the basis that that is the situation that is likely to continue for the foreseeable future.
63. The Secretary of State's position is that even though the appellant may have work and accommodation at the moment that is a very tenuous situation and that if any of that is lost, he will revert to criminality.
64. The question has to be what is reasonably foreseeable when the evidence is considered as a whole.
65. Miss Newton refers to lack of evidence of rehabilitation but there is some indication within the OASys report of work being undertaken with the appellant to deal with relevant issues, especially in the Completed Objectives table.
66. It is also relevant to note that the appellant is stated to be entitled to Universal Credit which may also include a housing element entitling him to assistance with the cost of any rent if he was to lose his employment. There was nothing before me to show that this comment in the OASys report is inaccurate.
67. There is also the point that when he lost his job in the car wash the appellant was motivated to seek further employment on the market stall in Wigan rather than reverting to acts of criminality.
68. Whilst it is impossible to look into the mind of the appellant, as that will be the job of a psychiatrist or psychologist, the evidence indicates a material change in the appellant's circumstances and in relation to his understanding of the situation, the reason for not offending in the future, the consequences of such

behaviour, and a full awareness that if he does reoffend in this manner in the future he is like to receive a far more substantial custodial sentence.

69. I find having undertaken a fact specific assessment that the appellant has established that he has rebutted the presumption. On that basis the appeal must be allowed.

Notice of Decision

70. Appeal allowed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 November 2024