**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal no: **RP/00163/2016**

THE IMMIGRATION ACTS

At **Field House** Decision signed: **07.12.2017**
On **05.12.2017** **8.12.2017**

Before:

Upper Tribunal Judge
**John FREEMAN**

Between:

**Assad TALAT**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

Representation:
For the appellant: *Z Raza* (counsel instructed by MA Consultants, Blackburn)
For the respondent: Mr P Duffy

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Manjit Obhi), sitting at Birmingham on 21 March, to dismiss a revocation of protection appeal by a citizen of Pakistan, born 27 August 1997. The appellant had arrived as a visitor with his family on 18 June 2009, and on 6 August that year his mother claimed asylum, which was granted her and her dependants on 14 December, till 2014.

**2.** By then this appellant had not only been found guilty of robbery in 2013, for which he received a referral order, but on 23 May 2014 been sentenced after trial to six years' detention for an offence, committed on 18 July 2013, of wounding with intent to cause grievous bodily harm, contrary to s. 18 of the Offences against the Person Act 1861. On 19 September 2014 that sentence was reduced to one of four years' detention by the Court of Appeal (Criminal Division).

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.*
*(2) persons under 18 are referred to by initials, and must not be further identified.*

**3.** On 10 November 2016, following the usual notices, the respondent gave notice of her decision to revoke the appellant's refugee status, refuse his human rights claim, and deport him. Following the dismissal of his appeal, permission to appeal was given by the Upper Tribunal on grounds (a) (not taking account of the reasons behind the Court of Appeal's reduction of the sentence, and what effect they might have on the remarks of the sentencing judge); and (c) (not taking account of the up-to-date probation report (14 March 2017).

**4.** The appellant was perhaps rather lucky to get permission on ground (a), as his representatives had not taken the trouble to put the Court of Appeal's reasoned judgment before the judge; nor was it before me when I first sat to hear this case on 17 October. It should be routine for the Home Office to provide such judgments as part of the appeal bundle; but, if they do not, it is the responsibility of those representing appellants to do so. As a result of directions I gave, the judgment was provided, and so ground (a) can now be dealt with properly.

**5.** The facts which led to the appellant's sentence were these. He had been unhappy about pictures put into circulation by the victim, much the same age as him, showing him being 'happy-slapped' by the same young man. The appellant had arranged a meeting between his own gang and the victim's: at first nothing untoward happened. Then the appellant rang his co-defendant, a little older, to come and join them. Next, in the words of the sentencing judge, he lured the victim over to talk; then the co-defendant arrived, armed with a kitchen knife, and stabbed the victim in the chest. As the judge said, the stab could easily have penetrated into a vital organ: this was "… a deliberate stabbing and inflicted with the clearest of intentions to cause a really serious injury". Finally the appellant took the knife from his co-defendant to have a go himself, but the victim escaped back to his friends, where he collapsed.

**6.** The sentencing judge had to deal not only with the appellant, who had stood trial, but with his co-defendant, who had pled guilty about a fortnight before it began. The co-defendant had asked for a *Goodyear* ([2005] EWCA Crim 888) indication from another judge, before whom he had appeared, and been told that the starting-point would be a sentence of six years' imprisonment. As well as changing his plea, the co-defendant had given a witness statement to the police, and offered to give evidence at the trial.

**7.** The sentencing judge agreed with that starting-point, on the basis that this was a borderline category 1 or 2 s. 18 offence, with a high level of culpability, but, more by luck than design, lesser harm done, in the context of an offence of that kind. With 25% discount for his late plea, the co-defendant received 4½ years' imprisonment: in his case, he had also had a previous referral order, and was 17 at the date of the offence, by the time he was sentenced 18.

**8.** This appellant, 15 at the date of the offence, and still only 16 when sentenced, got six years. The Court of Appeal considered the sentencing guidelines for s. 18 offences, and took the view that the judge must have taken the appropriate starting-point for a grown-up after trial in this case as one of eight or nine years' imprisonment.

**9.** It followed that the sentencing judge must have intended this appellant's six-year sentence to reflect an appropriate discount for his age, which could have been no more than 25% (on an eight-year sentence) or at most 33% (starting from nine years). The Court of Appeal went on to consider the youth sentencing guidelines, and reached this conclusion:

> … having had due regard to the terms of the pre-sentence report and the way that [the] judge assessed [the appellant], having seen him during a trial and, in particular, his recognition of his age and his immaturity, that discount was insufficient and resulted in a sentence which was manifestly excessive and also one which read rather oddly with the sentence imposed on [the co-defendant] …

**10.** Having applied what they considered the appropriate discount, the Court of Appeal reduced this appellant's sentence to one of 4½ years' detention. The question on ground (a) is what effect their reasons for that had on the validity of those given by Judge Obhi on this appeal. There was no complaint in the grounds as to any specific finding by the judge, but merely a general challenge to her general observation at paragraph 28:

> I place a great deal of weight on the impression made by the appellant on the sentencing judge who had heard him and seen him over the course of the trial.

A general suggestion was made at paragraph 9 of the grounds that the judge's sentencing remarks were 'overturned' by the Court of Appeal. As already noted, the passage in the judgment cited at **9** did no such thing: the Court of Appeal, like Judge Obhi, gave weight to the impression made by the appellant on the sentencing judge, who had seen and heard him for himself.

**11.** There were obvious reasons, especially in terms of this appellant's age, and the potential disparity with the sentence passed on his co-defendant, for the Court of Appeal to reduce his sentence. Their only other specific point on the sentencing remarks, which was also taken up by Mr Raza, was on that judge's reference to the appellant's immaturity. Judge Obhi dealt in some detail with the appellant's attitude to his offence at paragraph 23, and it is worth setting out what she said:

> The trial judge had no doubt that the appellant … intended to stab the victim and he was saved only to run to the company of his friends, where he collapsed and was put into the care of the emergency services. The appellant shows little actual remorse for what he has done. He expresses remorse but his statement concentrates on the impact on him. There is no understanding of the impact on the victim. He believes that he has already been punished for his offence and sending him back to Pakistan would be further punishment.

**12.** This might well be described as an immature attitude; but, as events showed, the appellant's immaturity had not stopped him from committing a planned offence of serious violence. There is nothing in the Court of Appeal's judgment to cast any doubt on the trial judge's view, as set out in the first sentence of Judge Obhi's remarks, just cited, and certainly no error of law in her part in relying on it; so ground (a) fails.

**13.** The question on ground (c) turns on the 2017 probation report, and how Judge Obhi dealt with it, in terms of the appellant's present attitude, including the rest of the passage just set out, where she is clearly describing the position at the date of the hearing before her. Rather annoyingly, the report-writer has followed Home Office practice in not numbering paragraphs, so I have done it for myself.

**14.** The passage in the report relied on in the grounds is this (from paragraph 13, the last on p 2):

> It is my assessment, in the here and now, [the appellant] has demonstrated high levels of remorse. His attitude is highly suggestive of change where he has attempted to engage with services to better his situation such as education, employment and training. His family remain actively supportive in the community, both emotionally and financially. There is no evidence at present suggesting he is engaging in reckless behaviour in the community.

**15.** At paragraph 26 Judge Obhi set out a passage, also from the 2017 report (at paragraphs 6 – 7, on pp 1 – 2), and to similar effect:

> [The appellant] during the commission of the offence and at the point of Sentence, struggled to comprehend the severity of the matter and therefore struggled to accept responsibility.
>
> Since his time in custody and release from Prison, [the appellant] has expressed remorse for the offence and now understands the impact of the offence upon the victim and accepts full responsibility.

**16.** What Judge Obhi is criticized for is (as the anonymous draftsman of the grounds, not Mr Raza) put it, is "… brusquely reject[ing] a report of a professional who is trained to assess risk of recidivism". This takes no account of the numerous points in the appellant's favour, which Judge Obhi went on to note at paragraph 26. At 28 she reaches her own conclusion:

> The report of the probation officer tells me that the GBH occurred after the appellant had been to the Mosque. Whilst I am told that the appellant has expressed remorse for the offence, I see little of that in his oral evidence or in his statement. The statements of the appellant and his family and friends are focused entirely on the appellant and his interests, there is no evidence of any understanding of the impact of his actions on his victim.

**17.** Judge Obhi's reference to the mosque made it clear that she has read and considered the following passage, at paragraphs 3 - 4 of the 2017 report:

> … [The appellant] was out with a group of approximately 8 friends around his own age. He had met up with members of his group following him attending Mosque during Ramadan. … They arrived at a … restaurant … and saw the victim who was known to [the appellant]. The victim beckoned him over and 'bumped fists' in a friendly greeting. The victim also greeted the other members of the group in a friendly manner. Shortly after this [the co-defendant] arrived and greeted everyone there, shaking their hands with the exception of the victim. [The appellant] states [the co-defendant] then walked away with the victim talking as they went.
>
> The victim was then stabbed and began to run away, he was pursued by [the co-defendant] and the others there all followed. [The appellant] explained this was to see what was happening. The following group then noticed blood on the T shirt of the victim and ran away. [The appellant] also ran away and noticed that [the co-defendant] had disappeared. [The appellant]

> and the other members of the group were arrested later the same evening and all were charged under the joint enterprise law of wounding with intent to cause GBH …

**18.** This was obviously the appellant's own account to the probation officer who wrote the 2017 report. It is only necessary to compare it with the summary at **5** (all taken from the sentencing judge's remarks) to see how far it is from the version of events accepted by the jury, and how very far this appellant still is from acknowledging his own responsibility for what happened. Instead of taking the blame for planning and encouraging a most serious offence of violence, and showing every sign of wanting to follow suit himself, the appellant has chosen to put forward an account of innocently meeting the victim when out for a meal with friends after the Ramadan fast, and finding himself charged with wounding with intent, simply because he had been present when his co-defendant stabbed him. Judge Obhi was abundantly justified in the view she took at 28, and ground (c) fails too.

**19.** That means the appeal must be dismissed; but it may be worth referring to the legal basis for Judge Obhi's decision, though no point on that was taken in the grounds or before me. This appellant, having been recognized as a refugee as his mother's dependant, could not be deported following his conviction, unless (see Refugee Convention article 33 (1), and Qualification Directive article 21.2 (b) "he … having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community …". By s. 72 (2) of the Nationality, Immigration and Asylum Act 2002

> A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
>
> (a) convicted in the United Kingdom of an offence, and
>
> (b) sentenced to a period of imprisonment of at least two years.

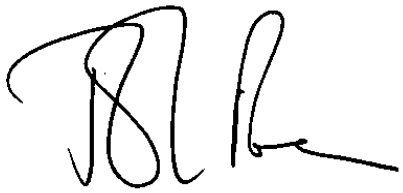
**20.** 'Imprisonment', by s. 72 (11) (b) (ii), includes detention, and there are similar provisions in article 14.4 of the Qualification Directive, allowing member states to revoke refugee status. This appellant is to be presumed to constitute a danger to the community; however, that is subject to the reading down of that presumption, based on the terms of article 21.2 of the Qualification Directive, to be found in *IH* (s.72; 'Particularly Serious Crime') Eritrea [2009] UKAIT 00012. This makes the presumption rebuttable; so the question for the judge on the part of the appeal in question was whether this appellant had satisfied her on the balance of probabilities that he was not a danger to the community.

**21.** The judge set out the effect of s. 72, as relied on by the respondent, at paragraph 21, and was clearly well aware of its provisions, though she dealt with the appeal against deportation in terms of paragraphs 398 – 399A of the Immigration Rules, and s. 117C of the Nationality, Immigration and Asylum Act 2002. It is perfectly clear from what she said, and with full justification, as already explained, about the appellant's attitude to his offence, that he had not satisfied her that he was not a danger to the community.

**22.** So far as the provisions referred to by the judge are concerned, both s. 117C (6) of the Nationality, Immigration and Asylum Act 2002 and the corresponding parts of the Rules made it clear that the public interest required this appellant's deportation, unless there were 'very compelling circumstances' over and above those set out under Exceptions 1 and 2.

**23.** Exception 2 did not apply here, since the appellant has no child or partner in this country; and neither did Exception 1. Each of its requirements must be satisfied for it to apply, and the judge was satisfied, for reasons she gave at 27, that none of them did. Even if permission had been given to challenge her findings on this point, it is beyond argument that this appellant, not quite 12 when he came here, and still only 19 at the date of the hearing, though 20 now, had not been 'lawfully resident in the United Kingdom for most of his life'; so Exception 1 cannot apply either. As for there being any 'very compelling circumstances' over and above those set out in Exceptions 1 and 2, no such argument was put forward in the grounds, or before me, nor could it have been with any possible hope of success.

**Appeal dismissed**



(a judge of the Upper Tribunal)