Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00038/2017**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
On 9 March 2018	**On 14 March 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

JAVID AKHOND
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bradley, of Peter G Farrell, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. For reasons explained in her decision dated 9 March 2017, the respondent revoked such protection status as the appellant had, refused his claim on protection and human rights grounds, and found no reasons why he should not be deported in pursuance of an order made on the same date.

2. Designated First-tier Tribunal Judge Murray dismissed the appellant's appeal for reasons explained in her decision promulgated on 15 September 2017.

3. My decision dated 17 and issued on 19 January 2018 explains why I came to the view (although very narrowly) that absence of an adjournment, even on a part-heard basis,

might have resulted in procedural unfairness, apparent or real, such that the decision should be **set aside**.

4. The scope of the further hearing was limited (unless on cause shown) to evidence going to the risk of re-offending and to submissions on the effect of the level of risk, once ascertained, on the outcome.

5. 5 March 2018 was agreed as a date which would permit both sides to prepare. In the event, the hearing proceeded on 9 March 2018.

6. On the UT file there is an application by the respondent under rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 dated 15 January 2018, seeking to introduce into evidence a minute of a multi-agency meeting on 9 January 2018, noting agreement that if the appellant were to be released he would "present a very high risk of serious harm to young girls aged 12 – 16 with a high degree of imminence". The application was not taken further at the error of law hearing, because that did not proceed to the stage of re-making. The item appears to have been superseded by the "criminal justice report" mentioned below.

7. The appellant forwarded two further inventories of productions. The first, under cover of a letter dated 7 March 2018, is a report by Sharon Paget, social worker, to the Parole Board for Scotland dated 29 September 2016 (the "parole board report"). The second, under cover of a letter dated 8 March 2018, comprises 5 articles, all generally on the care needs of unaccompanied young migrants and refugees. Mr Bradley applied orally at the outset of the hearing for both to be admitted into evidence.

8. Mr Matthews observed that the application did not comply with rule 15 (2A) in respect that there was no written notice under that rule; no explanation why the evidence had not been before the FtT; and no explanation for delay. He also pointed out that the evidence was tendered very late in proceedings which had already focused on the need for proper notice and preparation. He said that nevertheless he did not oppose the admission of inventory one, but inventory two simply came too late and should not be admitted.

9. As at the error of law hearing (see ¶6 of the decision), there was considerable force in these submissions.

10. There is unfortunately a general culture in both the FtT and the UT of disregard for directions and procedural requirements (in which present representatives are no better, but no worse, than many others). No doubt that arises from the reluctance of tribunals to exclude materials which might help appellants to make their cases; but there are limits to that tolerance, especially when they are professionally represented. However, the contents of inventory two seemed on brief perusal to be broadly relevant and uncontentious, and to spring no unfair surprises. Both inventories were admitted.

11. The parole board report states that in detention the appellant has presented at a medium level of risk of re-offending, but that analysis of additional factors suggests

that this is possibly an underestimate, and arrives at a high risk of further sexual recidivism.

12. No reference was made in submissions to anything in inventory two, and I see in those items nothing which might alter the outcome.

13. Mr Bradley indicated that the witness Mrs Stark was again in attendance, and that he wished to lead further oral evidence from her. He said that this would not be a repetition of her earlier evidence.

14. Mr Matthews submitted that no such further oral evidence should be admitted, in absence of any further report from the witness. Plainly, from the history of the case to date, that was a valid objection. However, it appeared that although a copy of the criminal justice report was posted to the appellant's representatives on 27 February it had not arrived promptly due to weather disruption, and that Mr Bradley was provided with an email copy on 2 March 2018.

15. The respondent had applied by letter dated 27 February 2018 in terms of rule 15 (2A) for admission into evidence of a report by Ms V J Keenan, the criminal justice social worker responsible for the appellant's case for over 4 years. This report ("the criminal justice report") appears to be undated but is recent. The appellant is found to present a high risk of causing serious harm. The author does not agree that factors identified by Mrs Stark reduce this to a low risk. Ms Keenan was present. Mr Matthews sought to ask her a few further questions. Mr Bradley did not oppose the admission of the report into evidence, and said he would wish to cross-examine.

16. I decided that Ms Keenan should give her evidence first, and that the appellant would then be permitted to lead further evidence from Mrs Stark, limited to matters arising from the report and evidence of Ms Keenan.

17. The appellant did not seek to give further evidence, or to attend the hearing.

18. Ms Keenan and Mrs Stark were not swayed in cross-examination into departing from their respective opinions.

19. The nub of the difference in their professional views is that Mrs Stark considers that the standard risk assessment tools were developed from research on populations of offenders in the UK in the 1990's, when the proportion of offenders of recent immigrant and refugee backgrounds was very small. In consequence, the weight given to factors such as family resources and availability of accommodation is skewed in such a way that someone of the appellant's background begins with a score well on the way up the scale, even had there been no offending. The effect of factors such as a traumatic childhood and different cultural expectations is also underestimated.

20. There is logic in the analysis by Ms Stark that some factors built in to the risk assessment tools inevitably weigh against a young migrant with a traumatic history and no family or accommodation in the UK. I am unable however to accept her further view that the appellant's offending has more to do with cultural confusion

and misunderstanding than with an interest in young females. That does not reflect his ongoing attitudes described in up to date reports, in particular his almost complete non-recognition that his behaviour (resulting in 6 years' imprisonment) has been in any way wrong.

21. That coincides with the view formed by Judge Murray, who heard the appellant's oral evidence. She found in him no acceptance, remorse or empathy with his victims and their families (¶55). She concluded that he represented a high risk of re-offending, in particular against females aged 11 to 15 (¶57).

22. Although I was asked to find that Ms Paget had better knowledge of the appellant than Ms Keenan and to prefer the parole board report to the criminal justice report, I do not find it necessary to resolve such conflict as there is. On either view, the appellant presents a medium to high risk of serious re-offending.

23. The case in the FtT was presented by counsel as having the report of Mrs Stark and the level of risk of re-offending at its core (¶4). Judge Murray considered the report of Mrs Stark and the submissions thereon in detail (¶25, 26, 37, 40, 50 – 54).

24. The only ground of appeal to the UT was procedural unfairness in not adjourning to hear the oral evidence of Mrs Stark. That exercise having been completed, her oral evidence has added little, if anything, to the content of her report.

25. The evidence has a whole does not move the dial significantly, and does not sensibly lead to a finding of low risk of re-offending.

26. A low risk of re-offending would not inevitably translate into a finding that the case discloses very compelling circumstances over and above those described in paragraphs 399 and 399A of the immigration rules; but as the case has developed, a finding of medium to high risk of re-offending is decisive.

27. The decision of the FtT is therefore remade to the same effect: the appeal, as brought to the FtT, is **dismissed**.

28. No anonymity direction has been requested or made.

12 March 2018
Upper Tribunal Judge Macleman