Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00022/2018

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 14 December 2018	**On 23 January 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ASM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Joseph, instructed by Turpin & Miller Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

2. The appellant, who is a citizen of Somalia, appeals with permission against a decision of the First-tier Tribunal (Judge M Loughridge) which dismissed his appeal under

the Refugee Convention, Art 15(c) of the Qualification Directive and Art 3 and 8 of the ECHR.

3. The appellant came to the UK in February 2000 and claimed asylum. On 1 August 2000, he was recognised as a refugee and granted indefinite leave to remain.

4. During his time in the UK, the appellant has been convicted of a number of drugs related offences. On 22 May 2009, he was convicted at the Ipswich Crown Court of possessing a Class A controlled drug with intent to supply, namely heroin. On 19 June 2009, he was sentenced to three years' detention in a Young Offenders Institution. On 26 September 2009, he was served with notice that he was liable to be deported. However, having raised a claim under Art 8, on 10 May 2011 the appellant was issued with a warning letter but the issue of deportation was taken no further.

5. On 16 March 2015, at the Swansea Crown Court the appellant was convicted of an offence of possessing a Class B controlled drug and possession of a Class A controlled drug with intent to supply, namely heroin. On 8 April 2015, the appellant was sentenced to five years' imprisonment.

6. On 14 December 2015, the appellant was served with notice of a decision to deport him under the automatic deportation provisions of the UK Borders Act 2007.

7. Following further submissions, the appellant was notified on 24 March 2007 of the respondent's intention to cease his refugee status. A deportation order against the appellant was signed on 15 December 2017.

8. On 29 January 2018, the Secretary of State made a decision to refuse the appellant international protection and human rights claims and took a decision to revoke his protection status.

9. The appellant appealed that decision and it is against the decision of Judge Loughridge dismissing his appeal on all grounds that the appellant now appeals.

10. Before me, Ms Aboni, represented the Secretary of State. Having heard submissions from Mr Joseph representing the appellant, she accepted that the Secretary of State had been wrong to revoke the appellant's international protection status. She accepted that the basis upon which it was now proposed that the appellant could return to Somalia was that he could internally relocate to Mogadishu even though it remained unsafe for him to return to his home area of Kismayo. Ms Aboni accepted that the possibility of internal relocation, was not, as a result of the Upper Tribunal's decision in MS (Art 1C(5) – Mogadishu) Somalia [2018] UKUT 196 (IAC), a sufficient change in circumstances (being limited to only one part of the country of proposed return) to justify the revocation of the appellant's refugee status pursuant to Art 1C(5) of the Refugee Convention.

11. After further submissions from both representatives, it was common ground that the proper disposal of the appellant's appeal should be in accordance with the Upper

Tribunal's decision in Essa (Revocation of protection status appeals) [2018] UKUT 244 (IAC).

12. Mr Joseph accepted, as the judge had decided, that s.72(10) of the Nationality, Immigration and Asylum Act 2002 applied as the s.72 certification was justified. In those circumstances, the appellant's appeal on asylum grounds must be dismissed. Although Judge Loughridge had dismissed (he used the words "reject[ed]") the appellant's appeal on Refugee Convention grounds, he had done so on a wrong basis in the light of MS and it was common ground between the parties that I should substitute a decision dismissing the Refugee Convention appeal on that ground. Consequently, the appellant's appeal under the Refugee Convention is dismissed as required by s.72(10) of the Nationality, Immigration and Asylum Act 2002 (the "NIA Act 2002").

13. Nevertheless, it was also accepted that the appellant's appeal against the decision to revoke his refugee status should have succeeded as the revocation was not in accordance with Art 1C(5) of the Refugee Convention. Both representatives indicated that, in that regard, this appeal should be disposed of in the same terms as set out in [21] of the Upper Tribunal's decision in Essa.

14. Although the appeal is dismissed on asylum grounds, as I am required by s.86(1)(a) of the NIA Act 2002, I conclude that the ground of appeal in s.84(3)(a) of the 2002 Act is made out. The decision to revoke his status breaches the Refugee Convention. The effect of that is that although the appeal is formally dismissed, the Secretary of State is on notice that the provisions of the Refugee Convention continue to apply to the appellant and (whether or not he is granted leave) he is entitled to them, as set out in Arts 2-30 of the Refugee Convention, including access to the labour market and welfare. Although the appellant's appeal is formally dismissed, his status under the Refugee Convention is not affected.

15. Mr Joseph also raised a point concerning the judge's decision to dismiss the appellant's appeal under Art 8. He accepted that, although the grounds of appeal challenge the judge's decision to dismiss the appeal under Art 8, the specific point he now wished to rely on was not raised. Ms Aboni did not object to this 'elaboration' of the grounds. Indeed, having heard Mr Joseph's submissions, Ms Aboni accepted that the judge had been wrong in law to dismiss the appellant's appeal under Art 8 and that the proper decision was that the appeal should be allowed under Art 8.

16. In applying s.117C of the NIA Act 2002, the judge treated the appellant as a "foreign criminal" who had been sentenced to a term of imprisonment of "four years or more" such that, by virtue of s.117C(6):

> "the public interest requires the deportation unless there are very compelling circumstances, *over and above* those described in Exception 1 and 2." (my emphasis)

17. At para 53 of his determination, Judge Loughridge found that Exception 1 (set out in s.117C(4)) did apply to the appellant, in that he had been lawfully resident in the

United Kingdom for most of his life; he was socially and culturally integrated in the UK; and there were very significant obstacles to his integration into Somalia on return. However, the judge went on to find that there were not "very compelling circumstances over and above" those in Exception 1.

18. Mr Joseph pointed out that the judge had been wrong to treat the appellant as a person who had been sentenced to a term of imprisonment of "four years or more". Whilst he had been sentenced to a total period of imprisonment of five years, this was as a result of two consecutive sentences – one of three years' imprisonment and the other of two years' imprisonment. By virtue of s.117D(4)(b), Mr Joseph pointed out, that consecutive sentences could not be aggregated for the purposes of determining a "period of imprisonment of a certain length of time", i.e. whether the appellant had been convicted of a term of imprisonment of "four years or more". Mr Joseph submitted that the judge had, therefore, been wrong in law to restrict the appellant to the application of s.117C(6). The appellant was entitled to succeed, because he would demonstrate that his deportation was not in the public interest, if Exception 1 under s.117C(4) applied because he fell within s.117C(3) as a person who had "not been sentenced to a period of imprisonment of four years or more". Ms Aboni agreed that Mr Joseph's submissions were correct. The judge had been wrong to require the appellant to demonstrate "very compelling circumstances over and above" those in Exception 1. She accepted that the judge had been entitled to find that the appellant fell with Exception 1 and that therefore the public interest did not require his deportation. She accepted that the judge's decision to dismiss the appeal under Art 8 should be set aside and the decision remade allowing the appeal under Art 8.

19. I agree with Mr Joseph's submission. Judge Loughridge erred in law in dismissing the appellant's appeal under Art 8 of the ECHR. Given his finding in para 53 that Exception 1 in s.117C(4) applied, Judge Loughridge should have allowed the appellant's appeal under Art 8 on the basis that the public interest did not require his deportation. I set aside Judge Loughridge's decision in respect of Art 8 and remake the decision allowing the appellant's appeal under Art 8 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal

10, January 2019