



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00028/2018

THE IMMIGRATION ACTS

Heard at Birmingham
On 17th September 2019

Decision & Reasons Promulgated
On 20th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

ROBLE [G]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J Holt, Counsel instructed by Turpin & Miller LLP (Oxford)
For the Respondent: Mr. D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Juss (“the judge”) promulgated on 28th May 2019.
2. The appellant is a national of Somalia. He arrived in the United Kingdom in November 2002 and claimed asylum. The claim was refused by the respondent but

following a successful appeal, the appellant was granted refugee status and indefinite leave to remain in January 2005.

3. On 15 April 2016 the appellant was convicted of robbery and possession of a firearm with intent to cause fear of violence at Leicester Crown Court. He was sentenced to 4 years imprisonment.
4. The respondent made a deportation decision under s32(5) of the UK Borders Act 2007 on the grounds that the appellant is a foreign national who has been convicted in the UK of an offence and has been sentenced to a period of imprisonment of at least 12 months. The respondent concluded that the exceptions set out in s33 of the Act did not apply, and the appellant's deportation was considered to be conducive to the public good.
5. The respondent also certified the matter under s.72(2) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') on the basis that the appellant had been convicted of a particularly serious crime and constitutes danger to the community of the United Kingdom. The respondent claims that the consequence of this decision is that the appellant's refugee status no longer prevents his return to Somalia in the light of Article 33(2) of the Refugee Convention.
6. The appellant's appeal was dismissed by First-tier Tribunal Judge Juss for the reasons set out in a decision promulgated on 28th May 2019. The appellant advanced three grounds of appeal. First, the judge erroneously conflates two different tests that are relevant to the appeal. At paragraph [20] when considering the certification under s72 of the 2002 Act, the Judge appears to proceed upon the basis that the issue is whether there has been a "fundamental and durable change" in the appellant. The issue for the tribunal when considering the certification, was whether the appellant constitutes a danger to the community of the UK. The test of whether there has been a "fundamental and durable change" was relevant to a cessation decision. Second, the Judge failed to consider cessation and third, the Judge failed to consider whether the removal of the appellant would be in breach of his Article 3 rights.

7. Permission to appeal was granted by FfT Judge Froom on the third ground (*the failure to consider Article 3*) on 21 June 2019. The appellant renewed the application for permission to rely upon the other grounds, and permission was granted on all grounds by Upper Tribunal Judge Rintoul on 18th July 2019.
8. In a rule 24 reply dated 9th July 2019, the respondent conceded that having upheld the s72 certificate, the judge was bound to consider whether the appellant's return to Mogadishu would be in breach of his Article 3 rights. The respondent accepted that the judge had failed to consider Article 3. At the hearing before me, Mr Mills now accepts that the FfT judge appears to conflate the test relevant to 'certification' with the test relevant to 'cessation', and the judge has failed to consider cessation at all. Mr Mills, properly in my judgment, accepts that the judge erred in law for the reasons advanced in the grounds of appeal. It was agreed between the parties that the errors of law are such as to require the decision of the judge to be set aside with no findings preserved.
9. As to disposal of the appeal, both Mr Holt and Mills submit that in view of the nature of the errors, and the need for the appeal to be reconsidered afresh, the appropriate course is for the matter to be remitted to the FfT for hearing afresh. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

10. The appeal is allowed and the appeal is remitted to the FfT for a fresh hearing of the appeal.

Signed

Date

17th September 2019

Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal and remitted the matter to the F/T for hearing afresh. In any event, no fee is payable and there can be no fee award.

Signed

17th September 2019

Upper Tribunal Judge Mandalia