



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00179/2018

THE IMMIGRATION ACTS

Heard at Field House
On 30 August 2019

Decision & Reasons Promulgated
On 17 September 2019

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Z. F.

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr P Georget, Counsel, instructed by NA Law Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal brought by the respondent. However, for convenience I will continue to refer to the parties hereinafter as they appeared before the First-tier Tribunal.
2. The respondent appeals against the decision of First-tier Tribunal Judge Howard ('the Judge') issued on 3 July 2019 by which the appellant's appeal against the

decision of the respondent to revoke his refugee status and replace it with discretionary leave to remain was allowed.

3. Judge of the First-tier Tribunal Buchanan granted permission on all grounds.

Anonymity

4. The Judge did not issue an anonymity order. This is a matter in which the appellant has previously been recognised as a refugee. I am mindful of Guidance Note 2013 No 1 concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this chamber of the Upper Tribunal as in all courts and Tribunals is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims. An appeal concerned with a revocation of refugee status falls within the scope of this Practice.
5. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order:

Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any formal publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid the likelihood of serious harm arising to the appellant from the content of his protection claim.

Background

6. The appellant is a national of the People's Republic of China and is presently aged 35. He entered this country in 2003 as a student and enjoyed leave to remain for several years before unsuccessfully seeking to vary leave. He was recognised by the respondent to be a refugee within the meaning of the 1951 UN Convention on the Status of Refugees on 15 October 2015 and granted leave to remain in this country until 11 January 2021. He was convicted at Basildon Crown Court of having between 1 June 2014 and 21 May 2015 fraudulently evaded duty in relation to the importation of tobacco under Section 170(2) of the Customs and Excise Management Act 1979. On 16 June 2017 he was sentenced by HHJ Pugh to a term of three years' imprisonment. In his sentencing remarks the sentencing judge observed:

"... you were convicted by the jury for being involved in smuggling large quantities of tobacco into this country. You were involved in arranging for the shipping containers to be delivered to storage sites and thereafter you were involved in the delivery of boxes of tobacco to customers in the United Kingdom. I am satisfied that this was an operation which involved significant planning and

accordingly falls within a high culpability. The value of the duty evaded was £9.8 million, just over.”

7. The respondent issued a decision to revoke the appellant’s refugee status on 13 November 2018 replacing it with discretionary leave extant to 11 January 2021 hereinbefore the FTT.
8. The appeal came before the Judge at Harmondsworth on 11 April 2019. By way of his decision of 3 July 2019 the Judge concluded that the respondent had failed to establish that the appellant currently constitutes a danger to the community and so the appellant was not excluded from international protection under the 1951 UN Convention.

Grounds of Appeal

9. By means of the respondent’s grounds complaint is made that the Judge failed to give any clear reasons for his finding that “I can conceive of no circumstances in which he is likely to offend again” as the offence was committed for financial gain. In relation to the same issue the respondent observed that there was no indication that the appellant had taken awareness courses to address the risk of reoffending, and therefore “would again become involved in smuggling activities for financial gain”. The respondent further complains that as the OASys Report was largely completed by the appellant it should carry little weight. It is further observed in the grounds that the appellant had denied the offence that this appears to fail to consider the evidence of the offender manager that the appellant recognised the consequences of his offending on others.
10. In granting permission, Judge of the First-tier Tribunal Buchanan primarily focused on the failure of the Judge to provide clear reasons as to why he could conceive of no circumstances in which the appellant was likely to offend again, though permission to appeal was granted on all grounds.
11. A Rule 24 response was filed by the applicant on the morning of the hearing.

The Hearing

12. Mr Bramble very fairly indicated that he had been able to consider the Rule 24 response handed to him by Mr Georget just before the commencement of the hearing, and whilst continuing to rely upon the grounds of appeal advanced by the respondent he had no further submissions to make. In response, Mr Georget relied upon the contents of the Rule 24 response that he had drafted.

Decision on Error of Law

13. The decision which underpins this appeal is that made by the respondent on 13 November 2018 headed "Decision to Revoke Refugee Status". Therein the respondent concluded:
- (i) that the appellant has been convicted of a particularly serious crime;
 - (ii) that he is a danger to the community; and consequently
 - (iii) that his refugee status was to be revoked pursuant to paragraph 339AC(2) of the Immigration Rules.
14. The respondent confirmed that she was not seeking to pursue the appellant's deportation at the present time and by way of a separate decision granted the appellant discretionary leave to remain. The revocation therefore denied the appellant the protection from refoulement and attendant benefits flowing from his recognition as a refugee.
15. The Judge's findings and decision are identified at [19] to [22] of the decision:
- "19. The report by his offending manager is dated 22 March 2019. In that report she notes, 'Following his release from custody it was clear that the period incarceration (sic) had a profound effect upon [the appellant]. He described feeling anxious resulting in difficulty sleeping and showing remorse for his involvement in this matter. He presents as adamant that he will not offend in the future and regrets the impact of this offence on his wife and in particular the time he missed with his young daughter. As stated above [the appellant] has expressed interest in undertaking voluntary work in order to pay back to society despite the fact he has already served a custodial sentence for this offence.'
 20. In addition to the above [the appellant] is now in gainful employment. I have been provided with copies of his recent payslips and P60. This is important as in his evidence he identified his principal motivator in offending his inability to work lawfully and his perceived need to provide for his partner.
 21. The offending in which he was convicted is clearly a 'particularly serious crime', by virtue of the amount of revenue of which it deprived the Exchequer. However, it must also be shown that he constitutes a danger to the community of the UK. There is a danger explicit in what he undertook. The tobacco industry is regulated in part to ensure the quality of the products being sold on the market in the UK. That tobacco, in its consumption, is inherently dangerous cannot be the danger he constitutes, it is however the potential additional danger presented by introducing products the provenance of which is unknown that creates the danger. However, the products imported by the appellant were finite and what I am being asked to consider is whether the appellant constitutes a danger. He is not violent and the only danger it could be concluded he poses is by the repetition of similar offending. I can conceive of no circumstances in which he is likely to reoffend.

22. In the circumstances of the evidence which is before me, whilst I find that the 'index' offences can properly be described as particularly serious offences, I find that the respondent has failed to establish that the appellant currently constitutes a danger to the community of the United Kingdom, the burden of proving otherwise lying upon the respondent. That burden has not been discharged. Consequently, I conclude that the appellant is not excluded from Refugee Convention protection with reference to section 72 of the 2002 Act."
16. After having considered the submissions made by both parties, I have concluded that the First-tier Tribunal decision, although concise in nature, did not involve the making of an error of law that would have made any material difference to the outcome of the appeal. At its heart, the respondent's criticisms are simply disagreements as to the findings of fact made.
17. The respondent's primary challenge is to the Judge's lack of reasoning when asserting that he could conceive of no circumstances in which the appellant is likely to offend again. I am in agreement with Mr Georget that this finding must be read in the context of what proceeds it and not in isolation. Approaching it fairly and as a whole, the decision makes sufficient sense that the parties can understand the Judge's reasoning. The Judge expressly considered the favourable opinion of the offender manager who not only has considerable experience as to the likely risk of further offending, but had also supervised the appellant over a period of time and was satisfied that when applying the correct test the appellant was not a danger to the community. Whilst the words "no circumstances" are used, I agree with Mr Georget that this overstatement is not material in the circumstances when taking the Judge's reasoning as a whole into consideration.
18. The Judge was entitled to rely upon the OASys report provided which was accompanied by a report authored by the appellant's offender manager. Consideration of the OASys report does not sustain the respondent's allegation that it was written largely by the appellant. OASys is an offender assessment tool used by both the prison and probation services to undertake risk in these assessments. The assessment includes a self-assessment questionnaire, but these are subject to professional scrutiny and assessments are often bolstered through the use of one or several interviews over time. Their widespread use by organisations required to consider risk by those who have criminal convictions underscores their reliability. This aspect of the respondent's challenge lacks focus, lacks particularity and has no merit.
19. In all of the circumstances the Judge lawfully considered the issues arising before him, gave lawful reasons and made no material error of law.

Notice of Decision

20. The decision of the First-tier Tribunal did not involve the making of an error on a point of law, the decision therefore stands.

21. I am very grateful for those helping to transcribe this decision.
22. No fee was paid or is payable and therefore there can be no fee award.

Signed: D. O'Callaghan

Upper Tribunal Judge O'Callaghan

Dated: 9 September 2019