



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: RP/00183/2018
PA/12973/2018**

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 13 August 2019**

**Decision & Reasons Promulgated
On 21 August 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

GEORGE DIXON

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Greer, Counsel

For the respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant has appealed against a decision of First-tier Tribunal ('FTT') Judge Agnew, sent on 21 March 2019, dismissing his appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Sierra Leone. He entered the UK as far back as 1985, and as such has a very lengthy immigration history. This is set out in detail in the FTT's decision and it is only necessary for me to summarise it here. In 1990 the appellant was sentenced to ten years imprisonment for drug offences. In 1995 he was granted refugee status. In 2001 he was imprisoned again for dishonesty offences. In 2008 he was given an indeterminate prison sentence with a minimum tariff of five years, having been convicted of rape and sexual assault.
3. In a decision dated 13 December 2013 the respondent decided to deport the appellant and 'cease' his refugee status. The appellant was released from custody in January 2018.

FTT decision

4. The FTT declined to adjourn the appeal in order to obtain a copy of the January 2019 OASYS report concerning the appellant. The FTT then dismissed the appeal on Refugee Convention and human rights grounds having made the following findings:
 - a) The appellant failed to rebut the presumption that he is a danger to the community and as such the certificate under s. 72 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') was upheld.
 - b) There have been fundamental and durable changes in Sierra Leone, and the appellant no longer faces any harm on the basis of his past activities there.
 - c) The appellant's belated claim that he is a homosexual is not credible and he therefore faces no risk in Sierra Leone in that regard.
 - d) The appellant has no family life in the UK, and in all the circumstances his deportation from the UK would not breach Article 8 of the ECHR.

Grounds of appeal to the Upper Tribunal ('UT')

5. UT Judge Reeds granted permission to appeal to the UT on the basis that it was arguable that the FTT decision not to grant an adjournment was procedurally unfair. The grounds focussed entirely upon the submission that it was unfair not to grant an adjournment in order to obtain the January 2019 OASYS report, in the light of the procedural history before the Tribunal.

Hearing

6. At the beginning of the hearing Mr Greer applied for an adjournment. He explained that the appellant had taken an overdose at court and had to be taken to hospital. I declined to grant an adjournment - the determination of whether the FTT decision contains an error of law

could properly and fairly be determined without the appellant's presence at the hearing.

7. Mr Greer was understandably shaken by what had taken place immediately before the hearing being called on, and for that reason I acceded to his request to stand the matter down for 30 minutes.
8. Upon the resumption of the hearing Mr Greer candidly acknowledged that the grounds of appeal focus entirely upon the failure to grant an adjournment without challenging in any way the substantive findings in relation to the appellant's risk in Sierra Leone or Article 8. Mr Greer accepted that unless there is a 'Robinson obvious' error of law in those findings, the decision not to continue with the hearing in the absence of the OASYS report could not be properly challenged. Mr Greer clarified that although he was not instructed to concede an absence of a 'Robinson obvious' error, he was unable to identify any.
9. Having heard these brief submissions, I did not need to hear from Mr Bates and indicated that I would be dismissing the appeal for reasons that I now provide.

Error of law discussion

10. The January 2019 OASYS report may have provided more up to date evidence regarding the appellant's dangerousness to society for the purposes of s. 72 of the 2002 Act. However, even assuming that the s. 72 certificate was not upheld, the appellant's appeal would inevitably fail given the un-appealed FTT's findings regarding the absence of any risk in Sierra Leone for the appellant and the FTT's findings regarding Article 8. Mr Greer clearly recognised that the appeal was bound to fail for this reason and as such acknowledged that the failure to grant an adjournment was immaterial to the ultimate conclusions on the substantive issues. This is sufficient to dispose of the appeal.
11. I also note that when granting permission, Judge Reeds underlined the need to provide a copy of the report to the UT, yet no updated OASYS report has been drawn to my attention.
12. In any event, in my judgment the FTT acted fairly in proceeding with the appeal, notwithstanding the source/s of blame for the absence of the OASYS report. The appellant had only been relatively recently released from custody after a lengthy sentence, following a very serious offence, with a lengthy history of serious drugs and dishonesty offending. He had no firm significant protective factors such as family life. The probation officer made it clear that the whole OASYS did not offer much on risk assessment, save for one section. A previous report dated January 2018 was available to the FTT and carefully considered by it. There was no cogent evidence, beyond the appellant's release from custody, to support any significant reduction

in risk between January 2018 and January 2019. The FTT gave the appellant sufficient opportunity to outline what had changed to lower his risk during the hearing, and was entitled to conclude that he lacked insight into his risk factors. It is very difficult to see how an updated OASYS report would have made any material difference in those circumstances.

Decision

24. The decision of the First-tier Tribunal did not involve the making of a material error of law and I do not set it aside.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
13 August 2019