IAC-AH-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00072/2019**

THE IMMIGRATION ACTS

Considered on the papers	**Decision & Reasons Promulgated**
On: 4 December 2020	**On: 14 December 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

AM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge I Ross, promulgated on 20 April 2020. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 21 May 2020.

Anonymity

2. An anonymity direction was made earlier in these proceedings and I consider it appropriate that this matter continue to be anonymised.

Background

3. The appellant entered the United Kingdom on 20 October 2003, aged 10 and accompanying his mother and siblings. He was recognised as a refugee on 24 June 2009 as a dependant of his mother. The appellant has a considerable criminal record, commencing in 2009. Most recently, in 2018, he was convicted of robbery and assault occasioning actual bodily harm and received a prison sentence of 5 years and 6 months. On 26 June 2019, the respondent revoked the appellant's refugee status and on 10 July 2019, a deportation order was made. On 15 July 2019, the respondent refused the appellant's protection and human rights claim which was made on 21 August 2018, concluding that there were no very compelling circumstances. The appellant appealed on asylum and human rights grounds.

The decision of the First-tier Tribunal

4. As a preliminary issue, the First-tier Tribunal concluded that the appellant represented a danger to the community, with reference to section 72 of the 2002 Act. His protection claims were therefore dismissed, as was his appeal against revocation of his refugee status. The judge found there to be no very compelling circumstances over and above those described in Exceptions 1 and 2 of section 117C (1)(6) of the 2002 Act.

The grounds of appeal

5. The grounds of appeal can be summarised as follows.

- A complete failure to have regard to the country expert evidence or UNHCR opinion
- There was no consideration of the risk to the appellant on return
- There was no assessment of the claim under Article 3 ECHR
- The Article 8 assessment was incomplete
- The consideration of section 72 was erroneous

6. Permission to appeal was granted, with the following commentary:

"It is arguable that in making no reference to or findings on an expert's report which is case specific and post-dates MOJ by 5 years when considering risk on return either in reference to asylum or Article 3, the Judge has materially erred. The s72 and Article 8 grounds appear to me to have less merit, but I do not limit the grant. "

Directions

7. Directions were emailed to the parties on 30 October 2020. The said directions communicated that a provisional view had been taken that the matter could be decided without a hearing and invited written submissions regarding whether the First-tier Tribunal made an error of law and whether that decision should be set aside. The parties were further invited to submit reasons if it was considered that a hearing was necessary.

8. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 states that the Upper Tribunal may make any decision with or without a hearing but must have regard to any view expressed by a party when deciding whether to do.

9. The respondent has yet to give an indication of her view as to the issue of whether the error of law matter could be justly determined without a hearing. The appellant's response was sent by email on 10 November 2020, which enclosed further submissions drafted by counsel. In essence, counsel stated that a hearing was not necessary provided the respondent conceded the errors of law, the Tribunal agreed with those concessions, set aside the decision and remitted the matter to the First-tier Tribunal.

10. On 11 November 2020, the Upper Tribunal received the respondent's Rule 24 response. It suffices to say that the Secretary of State did not oppose the appellant's appeal and grounds 1-4 were conceded. The respondent argued that the reasoning of the First-tier Tribunal regarding the s72 matter was adequate. The respondent expressed a preference for the matter to be retained at the Upper Tribunal but did not oppose a remittal to the First-tier Tribunal with the s.72 findings preserved.

11. I have considered the judgment in *JCWI v The President of the Upper Tribunal* [2020] EWHC 3103 (Admin) and conclude that the appellant will not be disadvantaged by the error of law issue being decided without a hearing in this instance for the following reasons. The appellant's representatives raised no objections to the proposed paper consideration in certain circumstances which have been met. The respondent conceded four out of five of the grounds of appeal, a concession which I have accepted below. In addition, the matter is to be remitted to the First-tier Tribunal for a de novo hearing given the seriousness of the omissions from the decision under appeal.

Decision on error of law

12. The Secretary of State rightly concedes that all but one of the multiple issues raised in the grounds of appeal are made out. All the grounds have the same theme, that is a failure to consider all the evidence submitted and submissions made on the appellant's behalf. The judge gave no indication in the decision that he had considered the expert's report or the opinion of UNHCR and he did not give any awareness of the fact that there was an Article 3 case to be assessed. The respondent rightly concedes that these errors may have also infected the judge's Article 8 consideration.

13. I am not prepared to preserve the s72 decision for the following reasons. The judge's assessment was unbalanced with the only factor taken into account on the appellant's side in what was a lengthy consideration [23-33] being his expressed remorse. It is apparent from [10-15] of the decision and reasons, that there was evidence before the judge regarding the courses the appellant took in prison, that his crimes were committed when he was young and under the influence of illicit drugs and that he was now clean, that he had moved away from his associations, he had obtained skills while imprisoned and was a trusted prisoner. In addition, his mother gave relevant evidence to the First-tier Tribunal. None of these factors was mentioned in the judge's s72 consideration. In these circumstances, the decision of the First-tier Tribunal is set aside with no findings preserved.

14. The appeal is remitted to the First-tier Tribunal for a de novo hearing. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his protection and human rights appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House IAC, with a time estimate of 3 hours, by any judge except First-tier Tribunal Judge I Ross.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Date 11 January 2021
Upper Tribunal Judge Kamara