



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: RP/00004/2020

**THE IMMIGRATION ACTS**

**Heard at Bradford (via Microsoft  
Teams)  
On 5 November 2021**

**Decision & Reasons Promulgated  
On 18 November 2021**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SF**  
(Anonymity direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Greer instructed by Batley Law.

For the Respondent: Mr Kotas, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

**1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Cox ('the judge') who, in a decision promulgated on 11 March 2021, dismissed the appellant's appeal.

## **Error of law**

2. The appellant is a citizen of Iran born on 11 November 1989 who was granted refugee status on 11 September 2007 and Indefinite Leave to Remain on 24 January 2013.
3. On 3 May 2017 the appellant was convicted at the Leeds Crown Court of the offence of threatening a person with a blade/sharp pointed article in a public place for which he was sentenced to 2 years imprisonment.
4. The Judge in the determination sets out the appellant's immigration history and the fact that following conviction the Secretary of State decided to revoke the appellant's refugee status on 13 January 2020, having issued a liability to deportation letter on 2 June 2017 and stating that section 72 of the Nationality, Immigration Asylum Act 2002 applied to the appellant.
5. The Judge's findings start from [14] of the decision under challenge, although that paragraph recites submissions made by the appellant's representative and at [16] by the Presenting Officer; although the Judge does in that paragraph find "in any event, I am satisfied that if the Respondent does not intend to enforce removal, then she acted unlawfully in purporting to rely on article 33(2) and revoking the Appellant's refugee status".
6. At [18] is the core finding of the Judge, which is in the following terms:
  18. I have considerable sympathy for the Appellant. In my judgement, the Respondent has acted unlawfully. However, my jurisdiction is limited by statute. The Respondent does not intend to remove the Appellant, and I am driven to conclude that the decision does not breach the U.K.'s obligations under the Convention. I dismiss the appeal.
7. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:
  2. The grounds assert that the judge had erred in law in finding that as the respondent did not intend to enforce removal she acted unlawfully in purporting to rely on Article 33 (2) and revoking the appellant's refugee status; that the judge erred in failing to consider on a hypothetical basis and alternatively that a decision to strip someone of their rights and entitlements as a refugee can arguably amount to a breach of the Convention even if there is no removal in prospect; that the failure to consider the section 72 Certificate first amounted to an error of law as having found that the appellant had not committed a particularly serious crime and was not a danger to the community dismiss the appeal as opposed to allowing it.
  3. The grounds assert, and it was accepted by the judge, that his approach in this appeal was novel and it was asserted that the judge should have deemed that there was a hypothetical removal. There is arguably some merit in this argument.
  4. The structure of the determination suggests that the judge failed to consider the requirements of section 72 (10) before his substantive consideration of the appeal. He found at [24] that the appellant had not committed a particularly serious crime, and at [28] concluded that the appellant had rebutted the presumption. Whilst arguably there may be issues as to the adequacy of reasoning in this paragraph the inference to be drawn is that the judge had not upheld the certificate. The judge in dismissing the appeal, therefore, may

have made an error of law as it was the commission of the particularly serious crime which had triggered the revocation.

5. Permission is granted on all grounds.

- 8.** A Rule 24 response received from the Secretary of State on 4 December 2021 refines her position which is now in the following terms:

UPDATED POSITION STATEMENT OF THE RESPONDENT FOR ERROR OF LAW HEARING ON 05 NOV 2021 \_\_\_\_\_

Submission

1. In preparation for tomorrow's error of law hearing, the SSHD having reviewed the determination and grounds of appeal seeking permission to appeal, wishes to reformulate her position as set out in her Rule 24 response dated 03 September 2021 as follows:
  - I. The respondent accepts that the FTT erred in failing to carry out a hypothetical analysis of the appellant's position on return to Iran – per *Essa* [2018]
  - II. It similarly erred in failing to consider the section 72 certificate first.
  - III. If the Upper Tribunal accepts the FTT did not err in its findings and conclusions regarding the Section 72 certificate it follows the appellant's appeal should be allowed under the convention - the appellant isn't a danger to the community so the rationale for revoking his status falls away.
  - IV. If, however, the UT agrees there were material errors in relation to the FTT's findings and conclusions on the certificate as set out in the SSHD's Rule 24 2 response, the only conclusion is that the determination must be set aside and remade.
  - V. In short, the SSHD does not now seek to maintain that any material errors in relation to the Section 72 certificate means that the overall decision of the FTT dismissing the appeal can be upheld as it requires a fresh and lawful appraisal of this issue.
- 9.** The Judge describes the approach taken to this matter in the determination as being 'novel' and there cannot be any objection to a judge exercising discretion in terms of how they communicate their decision and the reasons in support thereof, provided that that decision is legally sustainable.
- 10.** In this appeal following the finding set out at [18] the Judge adds a further subheading '*Postscript*' in which part the Judge considers the section 72 certificate and the question of whether the appellant constitutes a danger to the community.
- 11.** Those parts which followed the decision at [18] are obiter comments. Had the heading following the finding at [18] been "Reasons" it may have been possible to interpret them as being part of the judgement although this would not have cured the fault in the failure of the Judge to undertake the required hypothetical analysis.
- 12.** In light of the problems identified with this decision identified in the ground seeking permission to appeal, granted permission to appeal,

rule 24 response, and on the basis of matters being obiter, I set the decision aside, with no preserved findings.

- 13.** As the merits of the appeal have not been considered in the proper required structure, and in light of the Presidential Guidance in relation to the remittance of appeals, I find it is appropriate for this appeal to be remitted to Bradford for the decision to be remade by another judge sitting in the First-tier Tribunal there other than Judge Cox.
- 14.** Following discussion with the advocates in relation to next year. It was agreed that the focus of the next hearing should be upon the section 72 Certificate, Mr Kotas accepting that if the next judge finds that the presumption has been rebutted then the appeal would have to be allowed. Whether it is will be a matter for that judge.

### **Decision**

- 15. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the Bradford Hearing Centre to be heard by a judge other than Judge Cox.**

Anonymity.

- 16.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 5 November 2021