Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00009/2019

THE IMMIGRATION ACTS

Heard at Field House | **Decision & Reasons Promulgated**
On 14 June 2021 | **On 4 August 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

A A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(ANONYMITY DIRECTION MADE)

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings. We find that it is appropriate to continue the order. We make clear that the order is not made to protect the appellant's reputation following his conviction for a particularly serious criminal offence, but because the case involves consideration of protection issues. 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.

Representation:

For the appellant: Mr O. Sobowale, instructed by Morgan & Wiseman Solicitors
For the respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

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DECISION AND REASONS

Background

1. The appellant is a citizen of Burundi who entered the UK on 12 July 2003 with his mother. She claimed asylum on arrival with her children as dependents. The appellant was 11 years old when he arrived in the UK.

2. A copy of his mother's witness statement, which was produced in support of her asylum claim, stated that she was raised in Bujumbura. His mother described herself as a Hutu, but of mixed ethnicity. Her father was a Hutu, but her mother was mixed Tutsi(father)/Hutu(mother) ethnicity. She explained that a person would normally be identified through their paternal ethnicity. The appellant's mother worked as a market trader and owned a house in Rohero, Bujumbura. She was never married to the father of her three children. He was Tutsi. They separated in early 1995 when she was pregnant with her third child.

3. The appellant's mother described the political developments in Burundi, which led to election of the first Hutu president in June 1993. Melchior Ndadaye and several other high-ranking politicians were assassinated in October 1993 during an attempted coup led by Tutsi military officers. The coup attempt was the catalyst for mass killings on ethnic lines, which developed into an ongoing conflict. The appellant's mother said that she feared for her children because she was at risk of being killed by Tutsis. Her children were vulnerable because Hutus would not accept them, and extreme Tutsis would not accept them because their mother was Hutu. She said that the violence intensified during 1994 and into 1995.

4. In April 1995 her home was raided by Tutsi soldiers who accused her of being a 'Hutu rebel collaborator'. They ordered her to leave the zone or face the consequences. When her eldest son tried to help her, they cut him with a knife. She later found out that it was likely to have been a neighbour who was the leader of the Sans Echec Tutsi militia who denounced her to Tutsi soldiers. She was displaced with other Hutus to a camp in Gatumba zone, where they lived in poor conditions. After the Tutsi soldiers regained control in a coup and reinstalled the former Tutsi president, Paul Buyoya, in 1996, and the violence appeared to subside, she thought it might be safe to return home. After only a week the house was attacked with a grenade. Again, she thought this was done by the Sans Echec militia. She said that she was only able to avoid further persecution by paying members of the militia regular sums of money to avoid the accusation that she was a rebel collaborator.

5. In April 2003 Domitien Ndayizeye, a Hutu, became President following a three-year power sharing agreement. The main Hutu rebel groups had refused to sign the Arusha Accord. The appellant's mother said that she was anxious about the situation because in the past the Tutsi dominated army tried to assert their power by persecuting Hutu civilians when a Hutu was President. In May 2003 she was arrested by Tutsi soldiers on the pretext that she was suspected of helping the Hutu rebels.

She was able to escape on payment of a bribe. She was not released through official channels. She fled the area with her children because she was frightened that she would be arrested again. Fighting continued between the competing forces. She feared that her children were particularly vulnerable to being targeted by both sides because they were mixed ethnicity. She travelled to Uganda because she heard that there was an agent there who could assist her. She had to return to Bujumbura in July 2003 to sell more of her property so that she could afford to travel to the UK. When she returned to Bujumbura hundreds of people were killed or injured in heavy fighting and many people had to flee the area.

6. The account given by the appellant and his mother is consistent with the background evidence relating to events in Burundi at the time. The appellant says that he witnessed traumatic events as a young child including having seen a man's head being split open with a rock and seeing corpses and body parts by the side of the road on his way to school. He remembers grenades and gun shots. He described this level of violence as 'normal'. In a report dated 29 July 2019 Dr Mohammed Shaffiullha, a consultant psychiatrist, diagnosed the appellant as suffering from Mixed Anxiety and Depressive Disorder and co-morbid Complex Post-traumatic Stress Disorder (PTSD). This is consistent with the experiences the appellant has described. The appellant told Dr Shaffiullha that he was teased because of his lighter skin colour and called names like 'mzungu' ('white person'). He was bullied by local children and threatened if he did not steal items for them from local shops or from his mother. He told Dr Shaffiullha that he witnessed atrocities in Burundi. People were killed with guns and knives outside their house. He witnessed people being burned alive and looting. They slept in the corridor at night because there was shooting outside.

7. The appellant's mother left Burundi with her three children on 11 July 2003 and flew to the UK via Ethiopia. She claimed asylum on arrival. She was granted Indefinite Leave to Remain (ILR) as a refugee on 04 September 2003 with her children as her dependents.

Criminal offending

8. As a juvenile the appellant was convicted of several offences including robbery, taking a motor vehicle without consent, and actual bodily harm. None of the offences attracted a custodial sentence save for a robbery committed in 2008 for which he was sentenced to a 10-month detention and training order. All were committed when he was under 18 years old. Although concerning, they were not considered sufficiently serious for the respondent to consider deportation action.

9. The appellant was not convicted of any further offences for four years. The index offence was far more serious and constituted a major departure from his previous offending. On 30 January 2015 he was convicted of one count of kidnapping, one count of false imprisonment, and one count of blackmail. We will not set out the full details of the offence to maintain anonymity save to say that it was a particularly

serious crime whereby the victim was kidnapped and physically tortured by the appellant and his associates in an attempt to extort money. The very serious nature of the offence was reflected in the 15-year sentence of imprisonment imposed by the judge, which was later reduced to 13 years and 6 months by the Court of Appeal.

10. The sentencing judge outlined the extremely serious nature of the offence. The appellant was directly involved in inflicting at least one deliberate act of severe torture. The judge noted that he would normally begin sentencing in the range of 18-20 years. He took into account the fact that the appellant and his co-defendants pleaded guilty, albeit only after the victim had given evidence, but at least before he was subjected to cross-examination, and that they expressed remorse. Nevertheless, the crime was so serious it still attracted a substantial custodial sentence.

11. At the date of the hearing before the Upper Tribunal the appellant had been released on licence to approved accommodation and is subject to a stringent set of licence conditions. In preparation for his release the OASys assessment was updated on 29 March 2021. The assessor from the National Probation Service (NPS) conducted a full Layer 3 risk assessment considering a range of static and dynamic risk factors.

12. The Offender Group Reconvictions Scale (OGRS) score provides an assessment of static factors relating to the appellant's past offending history as an indicator of the likelihood of future offending. The OGRS 3 score for general offending within one year of his community sentence was 32% and was 49% within two years. The appellant told the assessor that he and his co-defendants planned the kidnap because they had information that the victim earned a lot of money through fraudulent activity. She noted that the main driver for the crime appeared to be a financial motive but given its serious nature the appellant also demonstrated a willingness to use violence. There may have been an element of excitement generated by his involvement in such a serious plan. In relation to the serious act of torture inflicted by the appellant he explained that he wanted to 'speed up the process'. The assessor noted that the appellant said that he knew what he did was wrong 'however his focus appeared to be centered (sic) more so on the effects this had on him and his associates, as opposed to the traumatic effects this has likely had to the victim'. The assessor concluded that 'whilst [he] is able to take some responsibility for his part in the commission of the offence, he was unable to fully demonstrate his awareness of the effects his behaviour would have had on the victim, at that time and in the future'.

13. In considering other dynamic factors relating to education, training, and employability the assessor noted that the appellant had a good attitude towards gaining qualifications and enhancing his education. However, he did not demonstrate a willingness to obtain stable employment. Before going into custody he was self-employed buying and selling items online. At one point the appellant asserted that he wanted to pursue a career in computer programming but appeared to have little knowledge about it or what it would involve. In a pre-release interview in February 2021 he said that he wanted to get involved in importing and exporting

coffee and needed £5,000 to make it viable. The assessor noted that it was unlikely that he would have legitimate access to this money. He also said that he wanted to try and start a business importing t-shirts from India before he went to prison, but this venture lost money. The appellant did not appear to have any aspirations to work for anyone else. Although he said that he would be willing to work in the gig economy (e.g. delivery work) to save money the assessor could not see how he would do this when he did not have a current driving licence.

14. The assessment went on to consider financial management and income as a potential risk factor and concluded that financial issues were linked to the risk of serious harm and his offending behaviour. The assessment noted that he was likely to have significant financial problems because he was not permitted to work because of his immigration status. As a result, he was likely to be reliant on family and friends. Given the link between his offending and his desire for financial gain, financial issues would need to be carefully monitored to ensure that he did not seek financial gain through illegal means.

15. The appellant's lifestyle and associates were factors linked to his offending behaviour. The records indicated that he may have previous affiliations to the EC gang. His anti-social peer group was likely to extend beyond those involved in the index offence. Returning to his local area was deemed to be problematic. Although he was willing to move to another area, this was unlikely to be possible due to his immigration problems. Cannabis use was also considered a risk factor that might affect his financial position if not working and may impact on the risk of acquisitive offending.

16. A factor that was noted but not explored in any detail due to lack of information, was the appellant's assertion that he suffered from PTSD. It is clear from the OASys report that he did not want to disclose the underlying reasons for PTSD although Dr Shaffiullha's report could have been made available to the assessor if the appellant had wanted her to understand this issue more fully. Section 10.8 of the OASys report stated:

> '[He] disclosed to me that he has been suffering from symptoms of Post-traumatic Stress Disorder (insomnia, anxiety, hypervigilance etc). [He] did not wish to discuss the cause of this condition but says that earlier in his sentence he spoke with the MHIT about these issues, thought there has been no mental health support since the start of Covid. [He] says that at one point he felt he was addicted to sleeping pills but this is no longer the case and he is not prescribed any form of medication at present. It may be [he] will be more comfortable to discuss the issues that led up to his PTSD symptoms as he gets to know his supervising PO on release. Until then, he admitted that some of his issues are ongoing, thought he has read books on PTSD so feels that he is making some headway in "having it under control". While it is important to recognise these issues with [his] emotional wellbeing, with the information available at present (& [his] reluctance to give any more detail) there is no clear link between this and his offending behaviour/serious harm. I would assess that despite this, this area warrants attention in [his] sentence plan upon release, especially since his immigration problems will do nothing to assist his mental health and emotional equilibrium.'

17. In assessing the factors that might increase the risk of serious harm Section 10.3 of the report stated that the risk would increase if the appellant resumed contact with pro-criminal peers or had no legitimate means of securing finances. Whilst he was not assessed to pose an 'immediate risk of serious harm' upon release the risk factors would need to be managed through the use of a robust risk management plan as well as interventions to address his attitudes, thinking and behaviour.

18. Having considered the static and dynamic risk factors the assessment concluded that the Offender General Predictor (OGP) score relating to the probability of proven non-violent reoffending was 38% within 1 year and 53% within 2 years placing him in the 'medium' risk category. The Offender Violent Predictor (OVP) score relating to the probability of proven violent reoffending was 21% within a 1 year and 33% within 2 years placing him in the 'medium' risk category. Although the scores for the static risk factors placed him in a 'low' risk category, when the professional assessment of the offender manager took into account the dynamic risk factors, the overall risk of reoffending posed by the appellant rose to 'medium', and if he did reoffend, there was a high risk of serious harm to members of the public due to the serious nature of the index offence.

19. The OASys report noted that the appellant completed the RESOLVE programme in prison and was suitable for other rehabilitative courses relating to thinking and behaviour. Despite the best endeavours of the appellant's representatives, and a direction to the relevant Offender Management Unit (OMU) to produce a full copy of the post-programme report, only a partial copy including every other page was available in the bundle. The report showed that he completed the course March-May 2019. The limitations of having an incomplete report are obvious. Although some of the sections outline positive engagement with the course, and highlight progress where warranted, it is difficult to assess the overall outcome without a full copy, which might include sections where a lack of progress was noted. The report noted that the appellant had disclosed to the group that he was 'exposed to acts of violence that included people being openly killed as Burundi was involved in a civil war'. He mentioned that when he moved to the UK he thought that the other pupils within the school 'were "soft" in comparison to himself who he saw as being fearless. It was positive that [he] linked being fearless into his person factors (sic) which in turn became part of his identity/reputation.' Given that the RESOLVE report pre-dated the most up to date OASys assessment it seems strange that the assessor did not pick up on the underlying cause of PTSD or explore how this might be linked to violent offending behaviour of this kind.

Deportation proceedings

20. The appellant was notified of his liability to deportation on 26 July 2017 and invited to make representations, which were sent to the respondent on 18 August 2017. On 16 November 2017 the respondent notified the appellant of her intention to revoke refugee status. Further representations were made on 20 November 2017. On 05 December 2017 the UNHCR was invited to express its view on the proposed

cessation of refugee status, which it did in correspondence dated 26 January 2018. No further action was taken until 30 January 2019, when the appellant was served with a signed deportation order and an appealable decision to refuse a protection and human rights claim. The respondent certified that there was a presumption that the appellant posed a danger to the community with reference to section 72 of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002').

21. For the purpose of this decision, it is only necessary to summarise the reasons given for ceasing refugee status because the Upper Tribunal is only remaking on protection and Article 3 grounds.

22. The decision letter referenced, but did not quote directly from, the 'COI Response Burundi – Political system and affiliation (16 June 2017)' and the 'COI Response Burundi – Religion; ethnicity – Tutsi tribe (28 April 2017)' The respondent accepted that a Burundian child usually inherits its ethnic identity from its father but asserted that a child of mixed ethnicity could 'also choose to be a part of his mother's ethnic group as long as its members are accepting.' The exact source of this information was unclear. It was asserted that the government of Burundi targets those who oppose the current President regardless of whether they are Hutu or Tutsi. The appellant was not politically active and would not come to the adverse attention of the authorities. On return he would have the 'choice of adopting either of your parents (sic) ethnicity and you also have the option of remaining "neutral".' The respondent referred to the letter dated 16 November 2017 and asserted that the circumstances that gave rise to the original grant of refugee status no longer existed.

23. The respondent noted the UNHCR opinion that the general security and human rights situation in Burundi has not improved in a fundamental and durable way for the purpose of applying Article 1C(5) of the Refugee Convention and repeated the previous reasons given for concluding that the appellant would no longer be at risk on return.

First-tier Tribunal decision

24. The appellant appealed the decision. The First-tier Tribunal allowed the appeal on protection grounds under the Refugee Convention and Article 3. The judge considered the incomplete RESOLVE report. He considered the evidence of the appellant and his brother as well as the psychiatric report of Dr Shaffiullha. The appellant expressed remorse for what he had done and promised that he would not commit any further offences. Having considered the evidence relating to rehabilitation the judge concluded that the appellant had rebutted the presumption that he is a danger to the community for the purpose of section 72(6) NIAA 2002.

25. The judge considered whether refugee status had ceased for the purpose of Article 1C(5) of the Refugee Convention. He considered the background evidence relating to Burundi and accepted that political opponents were at risk. He accepted that this

appeared to lend support to the respondent's assertion that the appellant would not be at risk on return because he is not politically active.

26. However, the judge went on to consider the evidence outlined by UNHCR in its recommendation. The evidence included a Financial Times article dated 09 November 2017, which reported that the International Criminal Court had authorised an investigation into alleged state-sponsored crimes against humanity in Burundi committed since 2015 when the President announced that he would stay in power beyond his term limit. The report added that some 413,490 people had been displaced between April 2015 and May 2017. The judge also took into account a report from the Immigration and Refugee Board of Canada which stated that some of the victims of human rights violations during search operations in December 2016 'were targeted because they were Tutsis'. Another witness claimed that Tutsis were systematically killed in Nyakabiga neighbourhood in Bujumbura whilst Hutus were spared. In Muramviya neighbourhood the decision to arrest people was also reportedly made on an ethnic basis, with most Hutus being released. The judge went on to consider a report from the Economist dated 23 April 2016, which stated that '[the President's] youth militia terrorises his opponents, many of whom are Tutsis. Hundreds, perhaps thousands, of people, most young men, have been "disappeared". Torture is rife … Tutsis have cause to be afraid. They are quietly being purged from the Army. On the radio, they hear murderous rhetoric of the sort that preceded the Rwandan genocide.' The judge noted that UNHCR concluded that the country information did not demonstrate that there was a significant, durable or non-temporary change in circumstances for the purpose of applying Article 1C(5).

27. The judge noted the respondent's response to the recommendation made by UNHCR in the decision letter. He bemoaned the fact that neither party produced any recent background evidence to assist him. He found that parts of the Home Office Response to an information request 'Burundi: Religion; ethnicity' (04/17-065) dated 28 April 2017 undermined her position. For example, a reference to the Federation of Human Rights League 2016 report stated that 'Tutsi populations are thus perceived as being opposed "by nature" to the power in place and are persecuted for this reason'. Having assessed the background evidence relating to the situation in Burundi the judge concluded that the respondent failed to show that there had been a fundamental and durable change in the circumstances for the purpose of Article 1C(5) of the Refugee Convention. The judge went on to make a further positive finding to say that he was satisfied that the appellant continued to have a well-founded fear of persecution in Burundi for reasons of his ethnic group or membership of a particular social group. It followed that the appellant was also at risk of ill-treatment contrary to Article 3 of the European Convention.

Upper Tribunal decision

28. The respondent was granted permission to appeal to the Upper Tribunal. In a decision promulgated on 13 January 2020 an Upper Tribunal judge found that the

First-tier Tribunal decision involved the making of an error on a point of law and set it aside.

29. The Upper Tribunal summarised the findings made by the First-tier Tribunal judge. The respondent's grounds of appeal focussed on the findings relating to section 72 and expressed general disagreement with outcome relating to risk on return. The Upper Tribunal judge made the following findings:

> "17. … The judge has failed to factor into his assessment the very particular assessment needed of the violence and sentence passed. A finding that a presumption under s72 has been rebutted must not only make findings of fact and delineate the evidence relied upon and the weight to be given to that evidence but there must be an acknowledgement of the seriousness of the criminality in that context; the greater the criminality the greater weight must be the evidence that leads to a finding the presumption has been rebutted.
>
> 18. The First-tier Tribunal judge erred in law in finding that [the appellant] rebutted the presumption under s72.
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> 19. The First-tier Tribunal judge considered the decision by the Secretary of State to revoke [the appellant's] refugee status in the context of his protection claim. He set out the test to be considered namely, briefly, that the burden lay upon the Secretary of State in proving there had been durable change in the circumstances in Burundi; the judge found that the burden had not been discharged.
>
> 20. That the First-tier Tribunal judge erred in finding that [the appellant] had rebutted the presumption leads inexorably to a finding that the decision by the judge that the Secretary of State had not proved there had been a durable change in circumstances such that refugee status could be revoked was infected by an error of law and is set aside accordingly.
>
> 21. The judge in paragraph 35 relies upon the same findings of fact to find that even if his findings regarding the rebuttal of the s72 presumption are incorrect, deportation would be contrary to Article 3. This is a fundamental error of law. The burden of proof in an Article 3 case is not the same as that involving a case where there has been a revocation of refugee status. The judge has failed to apply the correct burden of proof and his finding that [the appellant] would be at risk of an Article 3 breach is based on a fundamental error."

30. We make the following observations about the Upper Tribunal's findings.

31. First, the Upper Tribunal judge did not appear to give material consideration to the positive finding made by the First-tier Tribunal at [35] that the appellant continued to have a well-founded fear of persecution at the date of the hearing. This was consistent with the 'mirror image' approach emphasised by the Court of Appeal in *SSHD v MA (Somalia)* [2018] EWCA Civ 994; [2018] Imm AR 1273. The Upper Tribunal was correct to note that the burden falls on the respondent to show that refugee status has ceased. However, the error of law decision did not identify any specific errors of approach in the fact-finding exercise conducted by the First-tier Tribunal with reference to more recent background evidence. Nor were the

conclusions relating to risk on return found to be outside a range of reasonable responses to that evidence.

32. Second, section 72 is said to reflect a proper interpretation of Article 33(2) of the Refugee Convention, which outlines specific circumstances in which it is permissible to remove a refugee. Although section 72 inaccurately describes Article 33(2) as 'exclusion' from refugee status, in fact, it is an exception to the fundamental principle of *non-refoulement*. Section 72 relates to the question of whether a refugee poses a danger to the host community for the purpose of Article 33(2). This is separate to the question of whether a person has a well-founded fear of persecution under Article 1A(2) of the Refugee Convention if returned to their country of origin. For these reasons, we do not agree that it 'inexorably' followed that an error in a finding relating to the assessment of whether a person poses a danger to the community for the purpose of section 72 must 'infect' findings relating to risk on return for the purpose of Article 1A(2), which focussed on a different legal question.

33. Third, despite those observations, if the Upper Tribunal found that the decision involved an error of law in the assessment of section 72, it was obliged to set aside the overall conclusion that the appeal should be allowed on Refugee Convention grounds given that section 72(10)(b) dictates the outcome of the appeal on that ground if a person fails to rebut the presumption that they are a danger to the community. In view of the fact that the Upper Tribunal did not find any express errors in the First-tier Tribunal's factual findings, in our assessment, it does not necessarily follow that they were unsafe.

The hearing

34. The case was not deemed suitable for a remote hearing and was listed for a face-to-face hearing with appropriate social distancing measures in place due to the continued need to prevent the spread of Covid 19. The appellant and his mother gave evidence. The details of the evidence and submissions are a matter of record.

<u>Decision and reasons</u>

35. Section 72(10)(a) NIAA 2002 states that a court or tribunal 'must begin substantive deliberation on the appeal by considering the certificate'. Following the cases of *SSHD v JS (Uganda)* [2020] 1 WLR 43; [2020] Imm AR 258 (consideration of whether a dependent child was recognised as a refugee) and *Essa (Revocation of protection status appeals)* [2018] UKUT 244 (consideration of cessation even if a section 72 certificate is upheld), in a case such as this, a court or tribunal may also need to make findings on whether the person was recognised as, and still is, a refugee whether or not it agrees with the section 72 certificate.

36. The logical order to consider these issues for the purpose of international law would be to determine whether a person is a recognised refugee before deciding whether that status has ceased. The exception to the principle of *non-refoulement* only applies

to a person who is a refugee, so it makes sense to determine the issue of refugee status first before turning to the question of whether expulsion is justified because a refugee has been convicted of a particularly serious crime and constitutes a danger to the community. We recognise that under UK law a procedure is outlined in section 72(10)(a) NIAA 2002, but we cannot see that anything turns on taking the issues in a more logical order as long all relevant issues are determined, and the appropriate statutory outcome is applied.

Refugee Convention – recognition as a refugee (JS(Uganda))

37. Whether a person was recognised as a refugee will depend on the facts and circumstances of each case. The appellant entered the UK with his mother when he was 11 years old. The details of his mother's claim, and the nature of the conflict in Burundi at the time, showed a risk of ethnic violence that was not all that specific to her. She expressed a fear that her children would also be subject to persecution because of their mixed Tutsi/Hutu heritage. A copy of his mother's initial recognition of refugee status names the children as dependents. There is evidence to show that the appellant was issued with a UK Refugee Convention travel document.

38. When the respondent began deportation proceedings there was no suggestion that the appellant was not recognised as a refugee. The respondent went through the formal process of consulting with UNHCR regarding cessation before deciding that his status had ceased. The respondent could not decide that status had ceased without accepting that the person was a recognised refugee whose status could cease. We recognise that the decision in *JS (Uganda)* post-dates the decision to refuse the protection and human rights claim in this case, but the wording of the decision letter indicates that it was accepted that he was a recognised refugee. The respondent considered whether it was appropriate to 'revoke… refugee status' and referred to inviting representations on his 'continuing entitlement to refugee status'. The respondent concluded that 'subsequent to obtaining refugee status, you can no longer, because the circumstances in connection with which you have been recognised as a refugee have ceased to exist, continue to refuse to avail yourself of the protection of the country of nationality'.

39. Although Ms Isherwood provided a copy of *JS (Uganda)*, among other authorities, no clear submissions were made on the issue of initial recognition of refugee status beyond stating that he was recognised as a dependent on his mother's claim. She mentioned the decision in *SSHD v KN (DRC)* [2019] EWCA Civ 1665 but did not explain how or why she relied on it. The focus of her submissions was on whether there was a current risk on return.

40. We conclude that the respondent has not explicitly questioned the initial recognition of refugee status. In any event, we are satisfied that the nature and extent of the violence in Burundi at the relevant time shows that this is one of those cases, as recognised by the Court of Appeal in *JS (Uganda)*, where the whole family was likely

to be at risk. For these reasons, we find that the grant of status to the appellant's mother with her dependents also recognised the children as refugees. The appellant was recognised as a refugee at a time preceding the transposition of the Qualification Directive (EC/83/EC) into UK law and was a refugee with 'Convention status': see *Dang (Refugee – query revocation – Article 3)* [2013] UKUT 43 (IAC).

Refugee Convention – cessation (Essa)

41. A person is a refugee as soon as they meet the definition contained in Article 1A(2) of the Refugee Convention. A grant of leave to remain as a refugee is a declaratory act recognising that status. The Refugee Convention contains no principle of 'revocation' of status. Once recognised, refugee status only comes to an end in the circumstances set out in Article 1C, known as the cessation clauses. The cessation clauses only apply to a person who has been formally recognised as a refugee by the host state: see *R v Special Adjudicator (Respondent) ex parte Hoxha* [2005] 1 WLR 1063. In the same circumstances, a person who has not been formally recognised as a refugee simply no longer meets the requirements of Article 1A(2). In the case of a person who was granted leave to remain as a refugee prior to the transposition of the Qualification Directive the term 'revocation' can only have the ordinary meaning under UK law i.e. cancellation of leave to remain.

42. 'Once an asylum application has been formally determined and refugee status officially granted, with all the benefits both under the Convention and under national law which that carries with it, the refugee has the assurance of a secure future in the host country and a legitimate expectation that he will not henceforth be stripped of this save for demonstrably good and sufficient reason.' With this observation the House of Lords in *Hoxha* explained why there must be a 'strict' and 'restrictive' approach to the application of the cessation clauses.

43. The relevant clause for the purpose of this appeal is Article 1C(5). Refugee status will cease when a person can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality. The burden of proof is on the respondent to show that the cessation clause applies. A cessation decision is the 'mirror image' of a decision determining refugee status. The grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist: see *SSHD v MA (Somalia)* [2018] Imm AR 1273; [2018] EWCA Civ 994.

44. We have considered whether the evidence shows that the appellant continues to have a well-founded fear of persecution in Burundi taking into account the general political conditions there and his individual circumstances. Although the Court of Appeal has encouraged a 'mirror image' approach to the cessation clause, that assessment must still be approached within the correct legal context. The cessation clauses must be applied in a 'strict' and 'restrictive' way. The burden is on the respondent to show that there has been a fundamental and durable change in

circumstances such that the circumstances in connection with which the appellant was recognised as a refugee no longer exist.

45. Even if we are wrong in our observations about the extent of the Upper Tribunal's findings relating to errors of law in the First-tier Tribunal's findings of fact, having considered the most up to date evidence relating to the situation in Burundi, we have come to the same conclusion as the First-tier Tribunal in relation to risk on return.

46. The background evidence before the Upper Tribunal relating to Burundi is limited but contains reliable sources of information from the US State Department Reports for 2019 and 2020. The evidence also includes detailed articles from the Africa Center for Strategic Studies dated 24 September 2019 and 22 June 2020. We were also provided with a copy of the same Home Office response to an information request (RIR) dated 28 April 2017 on 'Burundi: Religion; ethnicity' (04/17-065) which was considered by the First-tier Tribunal.

47. We pick up the story of political events in Burundi from 2003 (see [3]-[5] above). In April 2003 Domitien Ndayizeye, a Hutu, succeeded Pierre Buyoya, a Tutsi, as President under the terms of the power sharing agreement. The evidence shows that by July 2003 there was a major rebel assault on Bujumbura causing thousands to flee their homes, including the appellant and his family. In November 2003 the fighting came to an end after President Ndayizeye signed an agreement with the Forces for Defence of Democracy (FDD), a Hutu rebel group led by Pierre Nkurunziza. In 2004 UN forces took over peacekeeping duties from African Union troops. In June 2005 Pierre Nkurunziza won a parliamentary election and was elected President. The government signed a ceasefire agreement with the last remaining rebel group, the Forces for National Liberation (FNL) in 2006 although it is reported that there were still sporadic clashes over the next two years.

48. Although the elections ushered in a period of relative stability, the evidence shows that the government of Pierre Nkurunziza became increasingly authoritarian. By 2015 Nkurunziza sought to extend the two-term constitutional restriction on his Presidency. Any resistance to this act was seen as opposition. It was increasingly met with violence and repression by his supporters, including the notorious Imbonerakure youth militia, which acts with near total impunity. The Africa Center article dated 24 September 2019 states that Nkurunziza's decision to pursue a third term coupled with the resurfacing of the Hutu nationalist agenda of the ruling CNDD-FDD party triggered months of protests and a failed coup attempt in May 2015. The article goes on to say that 'It also set off a wave of defections and tit for tat violence in the military, targeted killings of civilians – often with ethnic undertones – and the launching of armed rebellions by three separate movements.' The article suggests that around 1,700 people were killed since 2015 although the Final Report of the UN Independent Investigation on Burundi dated September 2017 cautioned that 'no one can quantify exactly all the violations that have taken place and continue to take place in a situation as closed and repressive as Burundi.'

49. The Africa Center article suggests that 400,000 refugees may have been created by the crisis (out of a population of 10 million). Atrocities by state agents are not confined within Burundi's borders. The article states that in 2018 the International Refugee Rights Initiative (IRRI) documented attacks, killings and disappearances of Burundian refugees at Uganda's Nakivale refugee camp. Refugees that IRRI spoke to said that they recognised Burundian intelligence agents and Imbonerakure members including some who had killed family members in Burundi. The USSD report also says that there were credible reports that the government attempted to use international law enforcement tools for politically motivated reprisals against specific individuals located outside the country. Human Rights Watch reported that authorities collaborated with Tanzanian officials to arrest, torture, forcibly repatriate, and detain without charge refugees and asylum seekers residing in Tanzania.

50. The new constitution passed in May 2018 is reported to have dismantled two thirds of the provisions of the Arusha Accords including the carefully crafted power sharing structure. The Africa Center article reported that as the CNDD-FDD was gearing up for planned elections in 2020 'intimidation, disappearance, killings and ethnic rhetoric are all on the rise.'

51. The US State Department Report for 2020 reported that the elections in May 2020 resulted were 'deeply flawed' with widespread reports of human rights abuses mostly perpetrated against the main opposition party members. Numerous irregularities undermined the credibility of the process in which international observers did not participate. Two weeks after the election Pierre Nkurunziza died and was succeeded by Evariste Ndayishimiye. The USSD report states stated that a UN mission noted that the government took steps to fight impunity in July and August 2020 to arrest and prosecute members of the ruling CNDD-FDD party youth league, senior police officers and local administrative officials for extortion and other criminal offences, but reported that the prevailing view was that more change was needed. The Africa Center article dated 22 June 2020 is less optimistic, providing an overview of rivalries and shifting power dynamics within the ruling party which may give power to even more hard-line Hutu nationalists with the government and the military.

52. The USSD continued to report significant human rights abuses in Burundi during 2020. In September 2020 the UN Commission of Inquiry on Burundi (COI) issued a report. The members of the Commission were denied access to the country but conducted face to face or remote interviews with more than 300 victims, witnesses and other sources in the country and in exile. It reported that bodies bearing signs of violence continued to be found in public places, but despite this, the authorities made no attempt to investigate their deaths. The COI report concluded that human rights violations were mainly committed by members of the Imbonerakure and local administrative officials acting alone or jointly with police or the National Intelligence Service. The USSD report went on to state that victims were generally perceived as opponents of the government or the ruling party. Some media outlets reported that Burundian nationals who returned to the country after having sought refuge abroad

were also targeted, as were young men following travel abroad who were accused of belonging to or supporting armed opposition groups. As in previous years, the COID report stated that there was reason to believe that abuses committed by the Burundian authorities constituted crimes against humanity.

53. The COI report went on to say that some victims associated with the opposition or even without political affiliation disappeared after refusing to join the ruling political party or the Imbonerakure. The NGOs Ligue Iteka and SOS Torture Burundi regularly reported disappearances, which were sometimes later determined to be killings when bodies were discovered. As of mid-September Ligue Iteka documented 30 disappearances but lack of access to reliable reporting, caused in part by restraints of civil society, limited the ability of human rights organisations to gather complete data. Despite some instances of arrests, impunity remained a problem.

54. The USSD report goes on to say that no verifiable statistics were available on the number of political prisoners or detainees but human rights groups estimate that it could range from a few hundred to as many as 4,000 people. The government denied incarcerating people for political reasons, citing instead acts against state security, participation in rebellion, or inciting insurrection. Human rights groups stated that these charges were often a pretext for repressing members of political opposition parties and human rights defenders. There were regular arrests of member of the opposition throughout the year, but others, mainly young men, were arrested or detained under suspicion of having cooperated with armed rebel groups.

55. The USSD report states that the government enforced the use of household logbooks in some neighbourhoods in the capital. In numerous instances, police arrested people during neighbourhood searches for not being registered in household booklets. Police, SNR agents, and Imbonerakure members sometimes acting as mixed security committees set up roadblocks and conducted general vehicle inspections and searches. While members of the security forces sought bribes, security agents were also reported to seize weapons and household items they claimed could be used to support an insurgency.

56. Ms Isherwood produced a copy of the Home Office RIR dated 28 April 2017 to assist the Upper Tribunal. We agree with the First-tier Tribunal judge that this document serves to emphasise that, whilst the political situation is more focussed on the repression of political opponents, there is still an ethnic dimension to the situation albeit at a less obvious level to the targeted killings of the 1990s. The RIR refers to various different source materials. A report from the Immigration and Refugee Board Canada emphasised that the government targeted anyone who opposes it, both Hutu and Tutsi. However, in a 2016 report the International Federation of Human Rights League stated that, 'while the ethnic factor is not always the primary motivation for crimes committed by the Burundian security force, it tends to become an "indicator" of the violence exercised by the Burundian authorities against those they suspect of being opposed to the President's third term. The same source states that "Tutsi populations are thus perceived as being opposed 'by nature' to the power in place

and are persecuted for this reason"' An academic whose area of interest included ethnicity and violence in Burundi stated: 'Burundi's ongoing political crisis has not occurred primarily on ethnic lines. Nonetheless, in some places in the country violence has taken on explicitly ethnic dimensions. In most instances of ethnically-charged violence, this violence has targeted Tutsis'

57. The RIR sets out another quote from the same Immigration and Refugee Board report, which cited information from a legal research internet site called Jurist led by a law professor from the University of Pittsburgh, which outlined academic commentary on 'genocide rhetoric' in Burundi. According to that commentary, demonstrations against the third term were contained by 'fierce reprisals [by police]' in Tutsi dominated suburbs. It goes on to say that 'according to Léonce Ngendakumana, one of the Hutu signatories to the Arusha Peace Agreement and President of the Frodebu-Sawanya opposition party, the Nkurunziza regime… "commits violent attacks on Tutsi neighbourhoods and young Tutsis who, when arrested, are quickly killed, while young Hutus are generally arrested for 'reform.'"'

58. The RIR goes on to cite a State of the World's Minorities and Indigenous Peoples report for 2016 which stated that many of the people killed in the violence in 2015 were reported to be unarmed civilians from primarily opposition supporting Tutsi neighbourhoods who were killed after being taken into custody during house-to-house searches by security forces. By the beginning of 2016 at least two new armed opposition groups reportedly formed with the stated aim of ousting Pierre Nkurunziza. The RIR referred to an article published by African argument in 2017 reporting that security forces and the Imbonerakure have increasingly targeted the Tutsis since December 2015. Similarly, the FIDH and the Ligue Iteka state that many victims reported being arrested and/or tortured after being identified as Tutsi. Other reports, including one by Human Rights Watch, were consistent in stating that there was evidence to show that Tutsis were targeted as suspected opponents.

59. The respondent's position is that the appellant is no longer at risk because the evidence shows that only political opponents are targeted by the government and the appellant has no political profile. Although the background evidence is broadly consistent with this assertion, in our assessment the respondent's decision letter over simplifies the situation. The recent history of Burundi has been rife with significant levels of ethnic violence. The evidence shows that the ethnic violence of the 1990s gave way to an authoritarian Hutu nationalist regime. The efforts forged in the Arusha Accords to provide balanced power sharing between the various groups were eroded along with other basic elements of the constitution, leading to a significant deterioration in the political situation in 2015. Whilst the evidence shows that the violence and oppression unleashed on perceived opponents since 2015 is not primarily motivated by ethnic identity, the evidence makes clear that long standing ethnic tensions remain a significant factor in Burundian politics.

60. The death of Pierre Nkurunziza in 2020 ended an era, but it is clear that his successor, President Ndayishimiye is a member of the same ruling CNDD-FDD party.

Although there are reports of some prosecutions of officials and members of the notorious Imbonerakure, overall, the evidence continues to show significant abuses and widespread impunity. This evidence might also need to be placed in the context of the reports of power struggles within the CNDD-FD and the army. Given that the government in power is Hutu dominated the evidence shows that Tutsis are more likely to be perceived as opponents. Young men are more likely to be perceived as potential rebel fighters. Those who have been refugees outside the country and who return from abroad are likely to be viewed with suspicion. Household registration and household searches by the authorities are likely to highlight a person's ethnicity and whether they have recently returned from abroad.

61. The appellant produced a letter from Mr Muhamoud Ndikumana, who it the Chairman of the Friends of Burundi Association (FoBA), which he describes as a relief and development charity. He says that the organisation is formed of people of Burundian descent 'whom we can say are better placed to know how things work'. He confirms what the appellant's mother told us in evidence, that people of mixed ethnicity are not trusted by either ethnic group because they cannot ascertain where their loyalties might lie. It is therefore 'safer (for them) to be eliminated'. While we accept that someone from Burundi may be able to express an opinion as to how people of mixed ethnicity are usually viewed, we cannot see that Mr Ndikumana is any better qualified than the appellant's mother to comment. In so far as their evidence is logical when placed in the historical context of ethnic violence in Burundi we take it into account.

62. The respondent's decision letter accepts that a child normally inherits its father's ethnicity. However, there is no evidence before us to support the assertion that 'a child of mixed ethnicity can also choose to be a part of his mother's ethnic group as long as its members are accepting.' Although the decision letter references another RIR report from 2017, that document was not directly quoted in the decision letter and a copy has not been provided for us to ascertain the source, if there is one, of the assertion that a person can 'choose' their ethnicity. It is trite that the perception of the potential persecutor is key: see *Sivakumar v SSHD* [2003] INLR 457. It matters less how the appellant might identify his ethnicity and more how others are likely to perceive him.

63. We have also taken into account the fact that his mother told us that she has returned to Burundi on three occasions to visit friends. However, we do not consider this indicates that the appellant would no longer be at risk on return. The appellant's mother returned for short periods of time, would be identified as a Hutu, and is of a different gender and age demographic to the appellant.

64. The evidence before us shows that the appellant is more likely to be perceived as a Tutsi due to his father's ethnicity. He says that he has been bullied in the past because of his lighter skin colour. We prefer the more logical explanation provided by the appellant's mother and Mr Ndikumana, that people of mixed ethnicity are also more likely to be viewed with suspicion. People of both ethnicities have good

reason to be cautious in light of Burundi's tragic history of ethnic violence. The evidence before us shows that young men are more likely to be seen as a potential threat. Refugees returning from abroad are also more likely to be viewed with suspicion. The family does not appear to have any significant remaining connections in Burundi either by way of property or close family members. The appellants mother told us that she stayed with a friend when she visited for a few weeks. The appellant left Burundi at a young age and has no knowledge of adult life there. He has no obvious household to register with and is likely to be viewed with suspicion on return.

65. The evidence shows that as a young man returning from abroad who is likely to be identified as a Tutsi, the appellant's profile is such that there is a reasonable degree of likelihood that he would be perceived as a potential political opponent. For these reasons we conclude that the evidence continues to show that the appellant has a well-founded fear of persecution for reasons of attributed political opinion and/or for reasons of his ethnicity.

66. The situation in Burundi has changed in focus to some extent, moving from overt ethnic violence towards political repression. However, the evidence shows that the ethnic tensions that fuelled the violence in the early 1990s still play a significant role in Burundian political and social life. Significant abuses are still carried out, largely with impunity, by the Hutu dominated authorities and militia groups acting on their behalf. The reliability of the recent elections were called into question. The death of President Nkurunziza changed the situation to some extent, but his successor comes from the same ruling Hutu nationalist party and it is too soon to tell whether there is any cause for optimism. In light of the evidence which continues to show a very serious and concerning human rights situation in Burundi, we conclude that the respondent has failed to show that there has been a fundamental and durable change in the circumstances such that the circumstances in connection with which he was recognised as a refugee have ceased to exist for the purpose of Article 1C(5) of the Refugee Convention.

Refugee Convention – Article 33(2) (section 72)

67. A core principle of the Refugee Convention is that no contracting state shall expel or return (*refoule*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened (Article 33(1)). The exception to the prohibition of *refoulement* is when there are reasonable grounds for regarding the refugee as a danger to the security of the country in which they are, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country (Article 33(2)). A person who has been recognised as a refugee can lawfully be expelled or removed from the host state without breaching obligations under the Refugee Convention. Status recognised with reference to the Refugee Convention ('Convention status') does not come to an end or cease upon the application of Article 33(2).

68. Section 72 of the NIAA 2002 is said to reflect the provisions contained in Article 33(2) of the Refugee Convention although it inaccurately describes the effect of the provision as 'exclusion' from Refugee Status rather than framing the provision in terms of permitted *refoulement*. In *EN (Serbia) v SSHD* [2009] EWCA Civ 630 the Court of Appeal emphasised that section 72 must be read to comply with Article 33(2) of the Refugee Convention. It is important to note that section 72 came into force before the Qualification Directive and is expressly intended to reflect the provisions of Article 33(2) of the Refugee Convention and <u>not</u> Article 14(4) of the Directive.

69. On behalf of the appellant it is not disputed that he has committed a particularly serious crime. The issue for determination in this appeal is whether, at the date of the hearing, the appellant has rebutted the presumption that he is a danger to the community for the purpose of section 76(6).

70. We have had the benefit of hearing evidence from the appellant and his mother. We have also set out the evidence contained in the partial copy of the RESOLVE report. We place greater weight on the OASys assessment because we only have a partial copy of the RESOLVE report, the OASys assessment is the main risk assessment tool, the OASys assessment took into account the RESOLVE course, and is the more recent assessment.

71. We find that the appellant's evidence at the hearing was consistent with the observations made by the officer who prepared the OASys assessment. The appellant accepts responsibility for his part in the offence. He said that 'crime is no longer in me'. He said that he had completely changed and no longer wanted to think about doing crime. He had been looking into doing a course on public speaking so that he could become a Toast Master. He was looking into online business studies courses. When asked what he would do with such a qualification he said that he was thinking of a wholesale business or selling things on line. The appellant told us that he was at an age where he might want to start a family. He wanted to pursue a peaceful life and not have to worry about the consequences of what he had done. When talking about the RESOLVE course he said that the programme helped a person to evaluate themself and what to do if you had thoughts of doing something criminal. He said it was 'about assessing whether it was worth the risk'.

72. It seems likely that a long period in prison has given the appellant time to think about the consequence of his actions, to engage with available rehabilitation, and simply to mature. In our assessment he may have made some progress towards rehabilitation but it is still early days since his release. We are concerned that his expression of responsibility for the offence, whilst no doubt sincerely held, is still fairly superficial. The reasons why he said that he would not commit crime were focussed far more on the potential negative impact that further offending might have on his own life rather than any meaningful acknowledgment of the impact it might have on others. A deeper understanding of the impact on his victim and how he might still pose a risk to other potential victims would have indicated progress, but that was lacking from his evidence.

73. The OASys report highlighted financial motivations for the crime as a result of the financial difficulties that the appellant fell into with an earlier attempt at running an online business. The OASys showed that he had ever changing plans for how he might earn a living, which had changed again by the time of the hearing. The appellant still has no willingness to take paid employment and only intends to earn a living through business and self-employment. This risks placing him in the same situation that led to the index offence. The appellant does not appear to have any insight into how or why his vague and peripatetic plans to earn a living might increase the risk of him reoffending.

74. It is unsurprising that the appellant was assessed as high risk of causing serious harm because of the very serious nature of the index offence. The risk of reoffending in relation to violent and non-violent offences is assessed to be 'medium'. This assessment was done recently. At the date of the hearing the appellant had only been released on licence for a few weeks and was still living in approved premises. Although we accept that he has made some progress with rehabilitation since his conviction, the appellant is subject to strict licence conditions and supervision. It is too soon to tell whether he is able to make further progress in reducing the risk that he poses while he serves the next half of his sentence in the community.

75. We highlight one other concern about the risk of reoffending that we think would be wise for the appellant to discuss with his supervising officer if he is serious about reducing the risk that he currently poses. It is of some concern that the assessor who completed the OASys report did not pick up on the obvious cause of PTSD, which was mentioned in the RESOLVE report. The fact that the appellant was exposed to extreme violence as a child is likely to be relevant to his own use of such serious violence. Dr Shaffiullha is not a forensic psychologist but is well qualified to comment on the overall effect of severe childhood trauma. His report highlighted that childhood trauma can greatly disrupt interpersonal relationships and a person's ability effectively to manage emotions. Consequently, when anger occurs, people with a history of childhood trauma may not know how to control those emotions, resulting in strong anger impulses and destructive behaviours. However, Dr Shaffiullha made clear that he did not think that 'the appellant's ability to understand the nature of his conduct to form a rational judgement or exercise control was substantially impaired by any mental health condition.'

76. Having highlighted this issue we are concerned that the evidence indicates that the appellant has not received professional treatment to tackle the effects of childhood trauma and appears to have resorted to reading books on the issue. Whilst we recognise that the appellant was reluctant to discuss his history of childhood trauma with the officer who prepared the OASys assessment, it is an issue that he may need to face in order to progress with his rehabilitation. He can only do this with professional assistance. His supervising officer or GP may be able to arrange a referral.

77. We take into account the very serious nature of the offence and the fact that the appellant is said to still pose a 'medium' risk of reoffending. Whilst one might expect that he may have made some progress after so many years in prison, the evidence suggests that the appellant has not yet tackled some of the risk factors that might reduce the risk he poses to the public.

78. For these reasons we are not satisfied that the appellant has rebutted the presumption that he is a danger to the community for the purpose of section 72(6) NIAA 2002. Section 72(10)(b) requires a court or tribunal to dismiss an appeal brought on the ground that the decision to revoke protection status breaches the United Kingdom's obligations under the Refugee Convention.

79. As the Upper Tribunal in *Essa* highlighted, it is difficult to square the wording of section 82(3)(a) NIAA 2002 when there is no principle of 'revocation' under the Refugee Convention, which is why it is necessary to still make findings relating to cessation even if the section 72 certificate is upheld. We have made a positive finding that the appellant continues to have a well-founded fear of persecution for a convention reason if returned to Burundi. He continues to meet the requirement of Article 1A(2) of the Refugee Convention, but is a removable refugee. However, by operation of statute the appeal brought on the Refugee Convention grounds must be dismissed.

European Convention – Article 3

80. We are fully aware of the fact that the burden of proof is on the respondent to show that the cessation clause applies, and that when considering Article 3, the burden of proof is on the appellant to show that there is a real risk of Article 3 ill-treatment. However, we have made a positive finding that the evidence shows on the low standard of proof that the appellant continues to have a well-founded fear of persecution if removed to Burundi. For the same reasons given above, we conclude that he is also at risk of Article 3 ill-treatment.

DECISION

The appeal is ALLOWED on human rights grounds (Article 3 ECHR)

Signed *M. Canavan* Date 29 July 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the

application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email