



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00079/2019

THE IMMIGRATION ACTS

Heard remotely by Skype for Business
On 22 April 2020

Decision & Reasons Promulgated
On 29 April 2021

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRBH
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Ms Ferguson

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1984 and is a citizen of Iraq. He appealed against a decision of the Secretary of State dated 31 July 2019 to revoke his refugee status which had been granted on 31 December 2012. On 27 April 2018, the appellant was convicted of acquisition/use/possession of criminal property and possession of Class A drugs and sentenced to prison for 10 months and 33 months respectively, the sentences to run concurrently. He appealed to the First-tier Tribunal, which in a decision

promulgated on 23 March 2020, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. There appeals proceeds on Grounds 2 and 3 only; Ground 1 is no longer pursued. The judge correctly summarised his task in the appeal at [20]; to determine whether the appellant had been convicted of a particularly serious crime and, secondly, whether he would be a danger to the community in the United Kingdom (see paragraph 339AC of HC 395 (as amended) and section 72 of the 2002 Act). He concluded [24] that the appellant had been convicted of a particularly serious crime. However, he found [26-30] that the appellant did not constitute a danger to the community.
3. The judge acknowledged that the appellant had been unemployed for 7 months after leaving prison and that that his failure to find work may increase the likelihood that he would re-offend. At [28] the judge identified a clear link between the appellant finding secure employment and the risk of his committing further economically-motivated offences. That observation was made against the background of the Offender Manager's evidence that, whilst the danger of the appellant re-offending was low, he still represented a medium risk of harm to the general public. The judge made no findings on the appellant's contention that he would be able to find work as a lifeguard or an Uber driver; in the absence of evidence, the judge appears to concluded that such findings would amount to speculation [28]. Mr Tan who appeared for the Secretary of State before the Upper Tribunal, submitted that, notwithstanding that observation, the judge then reached the speculative and somewhat vague finding that the appellant would be able to find employment 'within a reasonable period of time' and that 'therefore the risk of economically-motivated further offending is limited'. I agree with Mr Tan that the judge's conclusion does not sit easily with his reluctance to make findings in the absence of evidence. I agree also that 'within a reasonable period of time' fails to determine the period of time during which the appellant may pose a risk to the community. Moreover, whilst clearly attaching importance to the appellant's ability to find work, the judge does not address the fact that the appellant committed the index offences at a time when he was working and earning £30,000 per annum. The reasoning is opaque and the analysis flawed in consequence.
4. I also find that Ground 3 has merit. At [29], the judge found that prison had come as a 'big shock' to the appellant, the implication being it was an experience he would not wish to repeat. That finding may have some value but the finding in the same paragraph that the opinion that the appellant was at low risk of re-offending because he had undertaken courses in prison is much more difficult to justify. As the Secretary of State points out, it is unclear why the completion of courses such as a 'Vitality Group Workshop' or 'Personal Finance Certificate' would necessarily indicate that the appellant's propensity to offend again had diminished.
5. I find that the judge's analysis is unclear and that the decision is vitiated by legal error. I set aside the decision. More than a year has elapsed since the First-tier Tribunal's decision and further fact-finding may be required before the decision is

remade. Consequently, the appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision after a hearing. The finding (which has not been challenged by the appellant) that the appellant was convicted of a particularly serious offence is preserved. All other findings are set aside.

Notice of Decision

The decision of the First-tier Tribunal is set aside. Save as stated at [5] above, the findings are set aside. The appeal is returned the First-tier Tribunal for that Tribunal to remake the decision.

LISTING DIRECTIONS: first available date; Hatton Cross; not Judge Lemer; First-tier Tribunal to determine if face to face or remote; 2 hours; Farsi (Iranian) interpreter

Signed

Date 22 April 2020

Upper Tribunal Judge Lane

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

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