Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00020/2021**
Ce-File Number: UI-2022-001352

THE IMMIGRATION ACTS

Heard at Field House
On the 16 November 2022

Decision & Reasons Promulgated
On the 01 December 2022

Before

MRS JUSTICE THORNTON DBE
UPPER TRIBUNAL JUDGE KAMARA

Between

MI
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Anzani, counsel instructed by David Benson Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Cartin, promulgated on 1 March 2022. The parties are referred to as they appeared before the First-tier Tribunal.

2. Permission to appeal was granted by Upper Tribunal Judge Rimington on 27 June 2022.

Anonymity

3. An anonymity direction was made previously and is reiterated below because this is a protection matter involving a person who was previously recognised as a refugee and continues to rely on protection issues.

Background

4. The appellant applied for asylum in the United Kingdom on 30 April 2005, aged 14, following his arrest on suspicion of illegal entry. That application was refused for non-compliance and his appeal against that decision was dismissed. The appellant's mother subsequently unsuccessfully applied for asylum, including the appellant and his sibling as her dependants. The appellant's mother was granted refugee status following a successful appeal on 13 November 2008, with limited leave to remain until 12 November 2013. Thereafter she was granted indefinite leave to remain. The appellant was granted leave in line with his mother as her dependant. On 8 June 2018, the appellant applied to be naturalised as a British citizen, but this application was refused owing to non-payment of the fee.

5. On 21 November 2019, the appellant was convicted of conspiracy to handle stolen goods. He was subsequently sentenced to a term of four years' imprisonment.

6. A decision to deport was served on the appellant on 24 December 2019. In addition, on 14 October 2020, the appellant was sent a notice of intent to revoke his refugee status. Representations sent on behalf of the appellant argued that he continued to qualify for the protection status previously granted, relied on post-flight political activity by the appellant and his close relatives as well as the appellant having a fear of persecution owing to information that he provided during his criminal trial about gang members. There was also reference to the appellant's private and family life under Article 8 ECHR.

7. On 10 April 2021, the Secretary of State decide to revoke the appellant's refugee status as well as to refuse his human rights claim. In brief, it was not accepted that the appellant would face persecution on return to Turkey notwithstanding the UNHCR response dated 18 January 2021. The Article 8 claim was considered under the category of very compelling circumstances given the length of sentence imposed. It was noted that the appellant had no dependants, and it was not accepted that he had a subsisting relationship with his estranged wife. It was also not accepted

that there were any very significant obstacles to the appellant's integration in Turkey nor that there was any dependency between him and his relatives in the UK.

The decision of the First-tier Tribunal

8. At the hearing before the First-tier Tribunal, the judge treated the appellant as vulnerable owing to the contents of a psychiatric report. In reaching his decision, the judge noted that the Secretary of State's notice of intention to revoke refugee status dated 14 October 2020 had never been provided and the issue of durable change of circumstances had not been fully addressed in the decision letter. The judge placed weight on the letter from UNHCR of the 18 January 2021, concluding that the situation in Turkey had not fundamentally and durably changed and that the respondent had not made out the case for cessation. The judge found that the appellant had successfully rebutted the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002, that he posed a danger to the community. No findings were made regarding the present risk to the appellant if removed to Turkey.

The grounds of appeal

9. The grounds of appeal are as follows. Firstly, that the judge gave inadequate reasons for concluding that the appellant had rebutted the presumptions under Section 72 of the 2002 Act. Secondly, the judge misunderstood and misapplied *JS (Uganda)* [2019] EWCA Civ 670 in relation to derivative refugees like the appellant. Thirdly, the judge failed to assess any risk arising from the past and present circumstances of the appellant and his mother, with reference to *PS (cessation principles) Zimbabwe* [2021] UKUT 00283. Lastly, the decision of 14 October 2020 was provided in the respondent's bundle and the judge caused unfairness in not requesting it and in not considering it.

10. Permission to appeal was granted on the basis sought with the judge granting permission making the following comment.

> It is arguable that the judge failed to apply *JS (Uganda)* [2019] EWCA Civ 670 properly, failed to acknowledge evidence within the bundle including the 14th October 2020 decision, the Freedom House report link, and the CPIN which is in the public domain, and further arguably erred in his/her approach to the OASys report and failed to give adequate reasons for his/her conclusions.

11. The grounds of appeal were supplemented by a skeleton argument dated 26 October 2022.

12. The appellant filed a Rule 24 response dated 6 November 2022 in which the respondent's appeal was opposed, the grounds being described as mere disagreement.

The hearing

13. On the morning of the hearing, Ms Cunha served a number of authorities by email. She clarified that she did not seek to amend the grounds by adding a further ground that the judge failed to consider the section 72 issue first.

14. Ms Cunha focused her submissions on the second ground, which she considered to her strongest point. Relying on her skeleton argument, she added that the respondent's duty was to demonstrate that a durable change had occurred. Reliance was placed on several paragraphs of *JS* and it was submitted that the Secretary of State had engaged with that judgment in several respects including with whether the appellant had his own claim as well as addressing the basis for the mother's case which was set out in a Court of Appeal judgment. The judge misapplied *JS* and failed to explain why he considered that the appellant was a refugee in his own right. Furthermore, if the judge had applied *JS* properly, note would have been taken regarding what was said in *JS* at {129-130} about reliance on UNHCR reports.

15. For her part, Ms Anzani relied on her rule 24 response and similarly focused on the second ground. She argued that the appellant's circumstances could be distinguished from those of the claimant in *JS* who joined a parent under refugee family reunion. By contrast, the appellant arrived in the UK and made his own unsuccessful claim and was then considered as part of his mother's subsequent claim and granted refugee status in line with her. Ms Anzani also relied on *JS* at {190}, arguing that assessing whether risk does not extend to a family member was not a straightforward matter simply because the appellant was granted refugee status in line with his mother. *JS* was determinative of this issue in the appellant's favour. At [26] of the decision and reasons, the judge found that the decision under appeal did not properly engage with the principles in *JS*, specifically {190} and there was also no evidence of the extent and nature of the grant of refugee status to the appellant's mother. The judge was entitled to find that the respondent failed to establish that there had been a durable change for the appellant and his mother to justify cessation. Touching on the third ground, Ms Anzani argued that the reason the judge did not consider the other reasons put forward for a grant of refugee status came back to the failure of the Secretary of State to produce evidence regarding the appellant's mother and sibling. As for the UNHCR evidence, nothing in *JS* said the judge was not entitled to consider its' submissions, which were contained in the respondent's bundle.

16. In reply, Ms Cunha emphasised that it was clear from the evidence before the judge that the appellant had leave in line with his mother. The notice of intention to revoke refugee status which made out the respondent's case was contained in the respondent's bundle, but this was not considered by the judge.

17. Ms Anzani was given the opportunity to respond to this point and she asked us to note that the assessment was whether the appellant would be granted refugee status now as opposed to establishing whether there was durable and significant change in the country situation. The judge was entitled to rely on the information provided by UNHCR.

18. At the end of the hearing, we reserved our decision.

Decision on error of law

19. Like the representatives, we have focused on the second ground of appeal which concerns the judge's conclusion that there were no grounds for the Secretary to cease the appellant's refugee status, with reference to Article 1C (5) of the Refugee Convention 1951.

20. Article 1C (5) states as follows:

"C. This Convention shall cease to apply to any person falling under the terms of section A if:

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality…"

21. In *Hoxha* [2005] UKHL 19 a 'strict and restrictive' approach to cessation clauses was found to be required. At [63] the following was said:

'This provision [article 1C (5)], it shall be borne in mind, is one calculated, if invoked, to rebound to the refugee's disadvantage, not his benefit. Small wonder, therefore, that all the emphasis in paras 112 and 135 of the Handbook is upon the importance of ensuring that his recognised refugee status will not be taken from him save upon a fundamental change of circumstances in his home country. As the Lisbon Conference put it in para 27 of their conclusions: 'the asylum authorities should bear the burden of proof that such changes are indeed fundamental and durable.'

22. This appeal turns on the following passage of *JS*

> *114. The starting point of any analysis, as required by the Vienna Convention, is the plain ordinary meaning of the words in question. I have already set out above what, in my view, is the plain ordinary meaning of the term "refugee" in Article 1A of Refugee Convention, namely, a Refugee Convention refugee is a person who themselves have a "well-founded fear of being persecuted", i.e. an individual or personal fear of persecution, not one derived from or dependent upon another person (see above under Ground 1).*

23. The Secretary of State's main complaint in the second ground is that the judge erred in concluding that the appellant had been recognised as a refugee in his own right and this did not accord with the judgment in *JS*, with reference to derivative refugees. At [27], the judge finds that the respondent did not submit, at any stage, that the appellant was not a refugee and the references to him begin granted leave in line were 'unhelpful.' This is not entirely accurate, as paragraph 20 of the

respondent's decision to revoke refugee status relied on the judgment in *JS*, as the judge noted earlier in his decision [24].

24. We set out below the helpful overview set out by Underhill LJ in *JS*.

> *188. The starting-point is that JS was not granted refugee status in his own right – that is, because of any risk of persecution to which he personally was subject. He was admitted, under the Family Reunion Policy, because his mother had previously been admitted as a refugee. That is clear from the unchallenged findings of the FTT set out by Haddon-Cave LJ at para. 24.*
>
> *189. Admission on that basis did not mean that JS was himself entitled to any rights under the Convention. The Convention only confers rights on persons who themselves satisfy the definition in article 1A (2). I respectfully agree with Haddon-Cave LJ's analysis and reasoning both at paras. 70-73, which address the construction of article 1A (2) read in the context of the Convention itself, and at paras. 124-130, which explain why that meaning is not displaced by the other materials on which Mr Husain sought to rely. I agree that his conclusion is supported by the passages from the judgment of Sales LJ in Mosira which he discusses at paras. 142-145.*
>
> *190. I should like to observe, at the risk of spelling out the obvious, that this issue only arises in cases where the risk of persecution which leads to the grant of protection to the "primary" refugee does not also extend to his or her family members: very often of course it will, either because they share the same characteristic as gives rise to the risk or because the persecutor will extend his persecution of, say, a political activist to his or her family members irrespective of their own conduct or opinions. I do not wish to be understood as saying that there may not be very strong reasons for the admission of family members even where they personally are not at risk: I say only that those reasons do not derive from the Convention itself.*

25. Ms Anzani argued that the appellant's circumstances could be distinguished from those of the claimant in *JS*. We note that the judge did not make that finding. In any event, we reject that submission. While it was the case that the claimant in *JS* joined his parent in the UK under refugee family reunion whereas the appellant was dependent on his mother's claim, the result was the same, both were granted refugee status in line with their refugee parent, not in their own right. Both categories amount to derivative refugee status, applying *JS*. We therefore conclude that the First-tier Tribunal materially erred in failing to grapple with the respondent's contention that the appellant's status was a derivative refugee which meant that the protections of Article 1(C)5 did not apply to him.

26. In terms of the materiality of the error identified above, we find that owing to the judge concluding that the appellant was granted refugee status in his own right, there was a failure by the First-tier Tribunal to undertake the wide-ranging assessment of the appellant's circumstances required, applying *JS* at [164].

> 164. *It is clear from Sales LJ's above observations, that the Court in MM (Zimbabwe) took a similar view that the word "circumstances" in Article 1C (5) required a wide construction, embracing circumstances which included (a) the general conditions in the individual's home country and (b) relevant aspect of his personal characteristics.*

27. That wide-ranging assessment ought to have included consideration of the decision of 14 October 2020 where the appellant was informed of the respondent's intention to revoke his refugee status, and which addressed the appellant's personal profile. There is no indication that the judge considered this document and indeed he was given the impression that this letter had never been provided, despite it being contained in the respondent's bundle.

28. The other grounds have merit, however there is no need for us to consider them as the material error of law we have identified suffices to render unsafe the decision of the First-tier Tribunal.

29. We carefully considered whether to retain the matter for remaking in the Upper Tribunal, being mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. We also took into consideration the nature and extent of the findings to be made as well as that the parties have yet to have an adequate consideration of this revocation of protection appeal at the First-tier Tribunal and we concluded that it would be unfair to deprive them 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, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Cartin.

Direction Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed: T Kamara Date: 25 November 2022

Upper Tribunal Judge Kamara