IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001157

First-tier Tribunal No: RP/00004/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 May 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S
(Anonymity direction made)

Respondent

Representation:
For the Appellant: Mr McVeety, Senior Presenting Officer
For the Respondent: Ms Chaudhry , Counsel instructed on behalf of the respondent.

Heard at [IAC] on 5 April 2023

DECISION AND REASONS

1. The Secretary of State appeals, with permission, against the decision of the First-tier Tribunal (Judge Turner "the FtTJ") who, in a determination promulgated on the 10 January 2022 allowed the appeal of the respondent.

2. Whilst the appellant in these proceedings is the Secretary of State , for the sake of convenience I intend to refer to the parties as they were before the First-tier Tribunal.

3. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection matter involving a person who was previously recognised as a refugee and continues to rely on protection issues.

4. 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 or his family members, likely to lead members of the public to identify the appellant or his family members. Failure to comply with this order could amount to a contempt of court.

The background:

5. The factual background to the appeal is set out in the decision of the FtTJ, the decision letter and the papers in the parties' respective bundles. At the hearing the FtTJ heard oral evidence from the appellant and from his wife.

6. The FtTJ set out a summary of the salient facts as follows. The appellant is a national of Iran. He entered the United Kingdom clandestinely on 30 July 2006 and claimed asylum the following day. The application was refused but the appellant successfully appealed that decision on 3 January 2007. As a consequence the appellant was granted refugee status on 11 September 2007. In April 2010 the appellant committed an offence of battery. No details are provided of the circumstances of the offence. The appellant was granted indefinite leave to remain as a refugee on 22nd of January 2013.

7. On 3 May 2017 the appellant was convicted of an offence of threatening a person with a blade or sharply pointed article in a public place and was sentenced to a period of imprisonment of 2 years.

8. Following his conviction the appellant was sent a letter by the respondent dated 2nd of June 2017 informing him of the decision to deport him. He was advised that section 72 of the 2002 Act applied and was invited to rebut the presumption that he had been convicted of a serious offence and that he was a danger to the community. The appellant and his legal representatives responded to the letter and sent supporting documents. Following this the respondent sent a letter dated 16th of August 2019 of notice of intent to revoke the refugee status granted. At paragraph 7 of that notice reference was made to the representations made on behalf of the appellant, thereafter between paragraphs 14 – 16 the respondent set out that the facts of the offence met the threshold of section 72 to demonstrate a particularly serious crime and at paragraphs 17 – 20 reasons were given for considering that the appellant constituted a danger to the community. The UNHCR also provided a response to the decision (set out at page 106 of the core bundle).

9. Following further correspondence, the respondent issued a decision letter on 13 January 2020 to revoke the appellant's refugee status. The decision referred to the offences committed in 2010 and 2015 (convicted in 2017) and thereafter set out that the appellant showed no remorse and had continued to offend, and this was an escalation. It was concluded that whilst the letter from the legal representatives had stated the appellant had complied with all requirements since he was released from custody, there was no evidence how he was attempting to reform himself or of any rehabilitative programs to address behaviour. As a result the respondent concluded that section 72 applied. However at paragraph 44 of the decision the position of the respondent was that although refugee status was revoked, on the appellant's particular circumstances it was identified that there would be a potential

breach of his rights under article 3 of the ECHR and that removal would not be enforced at this time.

10. The decision taken on 13 January 2020 formed the basis of the appeal before the FtT (Judge Turner) in January 2022. At that hearing the judge recorded that she heard oral evidence from both the appellant and his wife and at paragraphs [40]-[41] the FtTJ set out the documentary evidence that had been produced for the hearing. At paragraph [43] the judge also recorded that whilst she was bound to be selective in her references to the evidence when explaining her reasons for the decision, she wished to emphasise that nevertheless she had considered all the evidence in the round before reaching her conclusions.

11. The FtTJ set out her assessment of the evidence and the findings on the primary facts from paragraphs [44 –61]. At paragraph [44] FtTJ expressly recorded the litigation history of the appeal. The present FtTJ noted that in remitting the matter the UTJ Hanson did not retain any findings made but gave a very helpful direction in terms of how the hearing should be considered which the FtTJ recorded. It was stated that with the advocates it was agreed that the focus of the next hearing should be on the section 72 certificate, and it was further recorded that the presenting officer accepted that “if the next judge finds the presumption of being rebutted than the appeal would have to be allowed” but that “whether it will be a matter for that judge”. Thus the judge recorded that the issues for consideration in the present appeal had been narrowed.

12. Dealing with the first limb of section 72 (2) (a) whether the appellant had been convicted of a serious offence, the FtTJ set out her assessment of that issue between paragraphs [46]-[49]. The FtTJ took into account the guidance in EN (Serbia) v SSHD [2009]EWCA Civ 630 and set out in depth the details of the offence taken from the sentencing judge’s remarks and concluded at paragraph [47] that the factors taken together indicated that the offence had been particularly serious. At paragraph [48] the FtTJ addressed the length of sentence and considered that the 2 years imposed brought him within the remit of section 72 (2) of the Act but also that the appellant pleaded not guilty, had sought to claim the weapon was a shoehorn as opposed to a blade which were matters that went to the attitude of the appellant at the time and the seriousness of the offence. The FtTJ concluded at paragraph [49] that she found the appellant had been convicted of a serious offence and that he had failed to rebut that presumption.

13. There is no cross appeal brought on behalf of the appellant to challenge the FtTJ’s assessment of that part of her decision.

14. Between paragraphs [50]-[61] the FtTJ set out her analysis and reasoning in respect of the 2nd limb of section 72 and whether the appellant was a danger to the community. For the reasons that the FtTJ gave within those paragraphs she concluded at [61] that the appellant had successfully rebutted the presumption that he continued to pose a danger to the community. In the light of her assessment of the evidence of her findings of fact, the FtTJ did not uphold the certificate pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002. As the FtTJ recorded that this disposed of the issues identified by the Upper Tribunal in its earlier decision. The FtTJ therefore allowed the appeal.

The appeal before the Upper Tribunal:

15. Permission to appeal was sought on behalf of the respondent which was refused by the FtT but on renewal granted by UTJ Rimington on 6 October 2022.

16. At the hearing, Mr McVeety, Senior Presenting Officer appeared on behalf of the respondent and Ms Chaudhry appeared on behalf of the appellant.

17. Mr McVeety indicated that he relied upon the written grounds of challenge and supplemented them with his oral submissions. They can be summarised as follows. Mr McVeety, in his oral submissions submitted that this was a limited appeal and one that was limited to the issue of the section 72 certificate. He confirmed that contrary to paragraph 7 of the written grounds in reference to the appellant's removal, it was accepted by the respondent that the appellant would not be removed as it was accepted that he would be at risk of ill treatment contrary to article 3 of the ECHR . He therefore referred to the applicable rule at paragraph 339AC (as set out in the FtTJ's decision at paragraph [29]].

18. The written grounds assert that there was a material misdirection of law and/or lack of adequate reasoning. In his oral submissions Mr McVeety confirmed that this was a "reasons challenge".

19. The grounds submit that the appellant had not demonstrated that he would not be a danger to the community. In this respect it is submitted that whilst the FtTJ noted the sentencing judge's remarks, the FtTJ did not provide an explanation for the factual circumstances of the offences as to the weapon he as carrying and that there was no element of spontaneity in the carrying of it. These were issues set out in the sentencing remarks. The grounds assert that the FtTJ's decision contains no consideration of this.

20. In his oral submissions Mr McVeety submitted that at paragraph [55] the FtTJ found that he was not a risk because of the nature and circumstances of the offence. He submitted that this was the reason the FtTJ erred in law between paragraphs [53 – 55] and that the FtTJ appeared to defend the appellant stating that he had been under stress as a result of his employment and had a new baby. He submitted that this was a commonplace situation and the FtTJ's reasoning did not adequately explain why the appellant was no longer considered to be a danger to the community. He submitted that he had acted in an extreme manner however whilst the FtTJ considered that he had taken drastic steps to change, there was no evidence of this from the probation service as to any courses undertaken in prison, and the only evidence was his oral evidence. In the circumstances, the FtTJ failed to consider how it could be claimed that his actions could be excused by those issues identified. The circumstances of the offence could not be explained. Mr McVeety submitted that the judge made a finding of fact without any evidence from the probation service, and this was not a finding open to the FtTJ .

21. Mr McVeety referred to the written grounds at paragraph 4 which referred to the FtTJ's finding of fact at [58] that the appellant had shown remorse. It was submitted that it had taken the appellant years to indicate any form of

remorse and that it was only given at the hearing. He submitted that in view of the lack of independent evidence and where the appellant had not told the truth, no credit would ever be given for this. He further referred to paragraph [59] of her decision where the judge referred to the appellant having made "two errors". He submitted that they were not errors but were criminal offences and this reference indicated the FtTJ's thinking and that she failed to focus on what he had done and that his actions were not rational. He further submitted that the judge failed to make finding that the appellant had a conviction in 2010 and that the conviction showed an escalation in offending . He therefore submitted that as a result the findings made by the FtTJ were not open to her to make.

22. Ms Chaudhry on behalf of the appellant made the following submissions. She submitted that the FtTJ gave adequate and made reasoned findings on the evidence before the tribunal which was set out between paragraphs [54]-[60]. In particular, in her findings of fact and her reasoning the judge set out the change in the appellant's situation since the offence had been committed. She further submitted that there was consideration of the circumstances surrounding the offence and that whilst it had been submitted circumstances were commonplace, different people have different reactions to stress and health problems and their actions vary. Nonetheless the FtTJ gave reasons for a shift in the appellant's outlook and attitude since his offending and the FtTJ had the advantage of hearing the evidence of the appellant and his wife, whose evidence was described as "compelling" indicating a change in the appellant's behaviour. He had removed himself from situations where stress had been a factor including his employment and the FtTJ had been entitled to take into account his involvement in the community work with young adults and that he had actively been participating in the community and that no further offending had taken place. Whilst the offence was different in character to that in 2010, the circumstances of the offence were explained.

23. Ms Chaudhry submitted that whilst it was argued on behalf of the respondent that the FtTJ should not have accepted the appellant's evidence as to remorse, it was a window into the shift of his attitude and owning up to the offence suggested elements of remorse. She submitted that given the appellant's conduct and action should be looked at in terms of looking forward, it was open to the FtTJ to take into account that he had not committed any further offences, that the factors taken cumulatively including the work undertaken in the community and the evidence given by the appellant and his wife that he was not a danger to the community.

24. She submitted that whilst there may not have been evidence from the probation service, there was evidence before the FtTJ which the judge was entitled to accept including evidence that was "compelling" from the appellant's wife to show that there had been a significant change in his behaviour. The appellant had removed himself from the job which had caused stress and the offence in 2010 was related to the same type of work. Ms Chaudhry submitted that the FtTJ has considered all the facts and had made findings of fact open to her on the evidence and that the grounds disclose no error of law.

25. There was no reply on behalf of the respondent .

The legal framework:

26. The decision involves a consideration of Article 33(2) of the Refugee Convention and Section 72 of the NIAA 2002; the relevant provisions of which are as follows:

(1) Article 33(2) of the Refugee Convention

"2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as being a danger to the security of the country in which he is, or who, having been convicted of a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

(2) Section 72

"**72 Serious criminal**

(1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).

(2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—

(a) convicted in the United Kingdom of an offence, and

(b) sentenced to a period of imprisonment of at least two years.

...

(6) A presumption under subsection (2) … that a person constitutes a danger to the community is rebuttable by that person.

…

(9) Subsection (10) applies where—

(a) a person appeals under section 82 … of this Act … wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and

(b) the Secretary of State issues a certificate that presumptions under subsection (2) … apply to the person (subject to rebuttal).

(10) The adjudicator, Tribunal or Commission hearing the appeal—

(a) must begin substantive deliberation on the appeal by considering the certificate, and

(b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).

(11) For the purposes of this section—

(a) "the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

(b) a reference to a person who is sentenced to a period of imprisonment of at least two years—

(i) does not include a reference to a person who receives a suspended sentence (unless at least two years of the sentence are not suspended),

(ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and

(iii) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years)."

27. Where the Secretary of State has certified his decision under section 72 of the 2002 Act, section 72(1) tells the Court or Tribunal how Article 33(2) of the Refugee Convention is to be applied. Section 72(10) of the 2002 Act requires

the Tribunal to begin its consideration of the appeal with consideration of the section 72 certificate. The claimant will have appealed under section 82, 83, 83A or 101 of the Nationality, Immigration and Asylum Act 2002 (as amended), wholly or partly on the ground that to remove him from, or to require him to leave the United Kingdom, would breach the United Kingdom's Refugee Convention obligations (see section 72(9)(a)).

28. A section 72 certificate has the effect of raising a dual statutory presumption: first, that the claimant has been convicted on a final judgment of a 'particularly serious crime' and second, that he 'constitutes a danger to the community'. In the case of a person convicted in the United Kingdom, section 72(2) provides that both presumptions come into effect where the individual is sentenced to a period of imprisonment of at least 2 years.

29. Both presumptions may be rebutted by appropriate evidence, as set out in section 72(6) and *EN (Serbia) v Secretary of State for the Home Department & Anor* [2009] EWCA Civ 630.

30. If both presumptions are not rebutted, then section 72(10)(b) of the Act requires the Tribunal to dismiss the appeal in so far as it relies on the Refugee Convention ground. No presumptions are raised in relation to human rights.

31. As confirmed in **IH (Section 72 particularly serious crime) Eritrea,** Section 72(9) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") permits the Secretary of State to issue a certificate that the presumption under Section 72 applies. When this is done, Section 72(10) requires the Tribunal to determine whether the presumptions do in fact apply to the asylum appeal and if they do dismiss the appeal. Thus a court or Tribunal considering an appeal against the refusal of a protection claim must begin by considering whether the person has rebutted the presumption that he is a danger to the community. If the court or Tribunal considers that the person has failed to rebut the presumption the appeal must be dismissed to the extent it relies on Refugee Convention grounds because if a person fails to rebut the presumption that person's removal would not amount to a breach of the United Kingdom's obligations under the Refugee Convention if refoulement is permitted under Article 33(2).

32. In EN (Serbia) v Secretary of State for the Home Department **[2009] INLR 459**, the court confirmed that both elements of the test must be shown: first that a person has been convicted of a particularly serious crime (where imprisonment of 12 months or more is imposed in the UK section 72(2) of the 2002 Act as amended) and second, that they constitute a danger to the community. Both presumptions were rebuttable and so far as the "danger to the community" is concerned the danger must be real. Having been convicted of a particularly serious crime, if there was a real risk of its repetition then the person was likely to constitute a danger to the community [45]. The Court of Appeal acknowledged that the danger would normally be demonstrated by proof of a particularly serious offence and the risk of its recurrence or the risk of recurrence of a similar offence.

Discussion:

33. The respondent’s challenge is to the FtTJ’s assessment of the issue of the section 72 certificate. As can be seen above, the FtTJ gave reasons why she

concluded at paragraph [49] that the appellant had been convicted of a serious offence and that the appellant had failed to rebut that presumption. There has been no cross-appeal or challenge to that assessment and thus the issue raised by the respondent relates to the 2nd limb of section 72.

34. In his submissions, Mr McVeety on behalf of the respondent confirmed that the grounds were a "reasons challenge" to the FtTJ's decision and that there was a lack of adequate reasoning in the decision of the FtTJ. There are also challenges made to the findings of fact made by the FtTJ.

35. Before considering the grounds there are some general points which are relevant to appeals on such grounds. The constraints to which appellate tribunals and courts are subject in relation to appeals against findings of fact were recently (re)summarised by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 in these terms, per Lewison LJ:

> "2. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
>
> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

36. The grounds assert that the FtTJ did not consider the nature and the circumstances of the offence. The grounds challenge paragraphs [53 – 55]. When addressing this ground of challenge, it is necessary to restate a general presumption that a decision of the FtT should be read as a whole. Whilst the grounds state that the FtTJ did not have regard to the nature and circumstances the crime, that is not reflected in the decision of the FtTJ. At paragraph [33] the FtTJ set out part of the sentencing remarks which highlighted the seriousness of the offence and at paragraphs [46 – 49] gave her reasoning and by reference to the sentencing judge's remarks, for finding that the appellant had committed a serious offence. In those paragraphs the FtTJ set out in detail the nature of the crimes committed; that a weapon was used which was "particularly dangerous" (at [47]), she set out the circumstances of the offence and the aggravating factors, including the longer term psychological impact upon a witness; that he pleaded not guilty claiming the weapon to be a shoehorn. Whilst those findings related to the first limb of section 72, the FtTJ did not disregard the assessment that she reached when considering the second limb section 72 and the conclusions she reached.

37. Whilst the respondent's grounds challenge paragraphs [53 – 55] on the basis that the FtTJ in her decision appeared to "defend the appellant", that is not an accurate representation of the FtTJ's assessment. In respect of the 2nd limb the FtTJ was required to consider that notwithstanding having committed a serious offence whether he remained a danger to the community and the focus of the assessment was whether the appellant had rebutted the statutory presumption. As the FtTJ stated at paragraph [50] this involved a "forward thinking approach". In this respect the FtTJ cited the decision in EN (Serbia) (as previously cited) and that the danger had to be "real" and could be demonstrated by particularly serious offence and the risk of it re-occurring or any re-occurrence of a similar offence. In undertaking the assessment, the FtTJ set out at paragraph [52] that she had heard oral evidence from the appellant and his wife regarding their personal circumstances at the time of the offence. The FtTJ recorded that she found the appellant's wife's evidence to be "particularly compelling" and at paragraphs [52 – 55], the FtTJ addressed the evidence and why it was relevant to her assessment of the section 72 certificate. The appellant's wife's evidence was that the appellant had been working in the security sector, he had faced risks and dangers upon his person including being struck by bottle and being shot at and that the type of work required a person to be on guard and effectively on edge for prolonged periods. At paragraph [53] the FtTJ referred to the parties having a new baby at the time of the offence.

38. Between paragraphs [52 – 55] of the decision the FtTJ set out the challenges made by the presenting officer to the evidence of the appellant and his wife and whether the appellant would act in a similar way if he found himself in a stressful situation in the future. The FtTJ recorded the evidence as follows "she explained that he had changed his whole way of life. He removed himself from the security industry and now works in a shop which is significantly less stressful". The FtTJ also recorded the appellant's wife's evidence that she had "noticed a marked change in the appellant's attitude and demeanour which assures her that found in a similar situation future, he would react in a very different way."

39. A careful reading of those paragraphs does not support the respondent's submission that the FtTJ was seeking to defend the appellant's actions. Nor

was the FtTJ seeking to minimise his actions and previous conduct but was seeking to address the issue of what had changed in the appellant's life since the offence had been committed and how his circumstances had changed when undertaking the assessment of whether he was still a risk. The FtTJ's finding at paragraph [55] that on the evidence she found that the appellant had taken "drastic steps to change the situation and his ability to cope with stress" was one based on her assessment of that evidence and was open to the judge to make when addressing the 2nd limb.

40. The respondent's grounds have submitted that the FtTJ had failed to adequately reason why the appellant was no longer a danger to the community and that there was no evidence from the probation service as to courses in prison undertaken. Mr McVeety on behalf of the respondent submitted that the only evidence was the oral evidence of the appellant.

41. Contrary to the submissions, the FtTJ did give adequate reasons for reaching the conclusion on this issue and did so by reference to the evidence. At paragraphs [52]-[55] the FtTJ expressly addressed the evidence that she had heard and did so in the context of the cross-examination undertaken by the presenting officer. At paragraph [55] the FtTJ made a finding that the appellant had taken "drastic steps" to change the situation, and this was a finding open to the judge to make. The judge had heard oral evidence from both the appellant and the appellant's wife which had evidently been the subject of robust cross-examination (see paragraphs [54]-[55]). It is plain from the overall decision reached that the FtTJ found the evidence given by both the appellant and his wife to have been reliable evidence. In the case of the appellant's wife the FtTJ referred to that evidence as "particularly compelling". Whilst the respondent argues that the FtTJ only had the oral evidence of the appellant as to the steps taken to change that was not accurate. The FtTJ did have the advantage of hearing the evidence of the appellant's wife alongside the evidence of the appellant. The FtTJ carefully considered and assessed this evidence as can be seen at paragraph [59] where the judge returned to her assessment of the appellant's wife's evidence as "particularly compelling" regarding the changes that she had seen her husband. However the FtTJ noted that the appellant's wife was not an independent witness and could have a vested interest in giving supportive evidence. Nonetheless, having taken into account those balancing factors, the FtTJ formed the view that she was the person best placed to explain how the appellant had changed. It was therefore not the case that the FtTJ simply accepted her evidence but gave reasons why she placed weight and reliance on that evidence.

42. It is right that the FtTJ did not have evidence of the probation service as to courses undertaken and the FtTJ set out the evidence from the appellant's legal representatives who had approached the probation service with no response. However, it was open to the FtTJ to find that there had been "no evidence that the appellant had been breached for non-compliance with his licence conditions" nor had he been "recalled to custody". Thus the FtTJ's finding that the evidence suggested that he had complied with the probation service after his release from custody was one reasonably open to the FtTJ to make.

43. The respondent also challenges the acceptance by the FtTJ of the appellant's stated remorse. Paragraph [58] of the decision sets out the assessment of this part of the evidence. Contrary to the grounds, the FtTJ was

plainly aware that the appellant had initially denied the offence as reflected in the judge's own view which she expressed at paragraph [58] and that of the trial judge. There is no error in a FtTJ considering the issue of remorse in the context of the evidence as a whole and it is equally clear from paragraph [58] that the FtTJ carefully considered the evidence given by the appellant and did so in the context of hearing his evidence being the subject of cross-examination by the presenting officer as reflected in that paragraph. The FtTJ had the opportunity and the advantage of hearing the evidence and reflecting on that evidence when seen in the context of his earlier denial. From the decision reached it can be seen that the FtTJ found from the overall evidence that the appellant's remorse and expression of his admission was reliable evidence upon which she accepted and could place weight upon and that not only did it represent remorse for his actions but also provided recognition of the seriousness of the offence.

44. Whilst Mr McVeety referred to paragraph [59] and the reference made to the appellant having made "2 errors" and this indicated the FtTJ's thinking, that is also not an accurate representation of the decision and by reading the continuation of that sentence it can be seen that the FtTJ was referring to the appellant having committed 2 offences; one in 2010 and the more serious offence and was not seeking to minimise his actions.

45. In conclusion, the FtTJ in her decision had properly considered the serious nature of the crime committed in 2015 (sentenced in 2017) and that there had been an earlier offence committed in 2010. In her assessment the FtTJ was required to carefully assess the evidence that she had both read and heard from the appellant and his wife in the context of the evidence as a whole and it is plain from reading the FtTJ's decision that she formed a favourable view of the evidence given by the appellant and had found the appellant's wife's evidence to be "particularly compelling" when making her factual findings. The FtTJ found her evidence to be supportive evidence of the steps taken by the appellant to change his life. It was open to the FtTJ to place weight on her oral evidence that she had noticed a "marked change in his attitude and demeanour" which reflected in how he would act in the future, and that the appellant had taken "drastic steps" to change his life having taken a different type of employment, that he had complied with his licence conditions (paragraphs [55 – 56]) that he had not committed any further offences in the period of 6 years. It was also open to the FtTJ to accept the appellant's evidence that he was remorseful for his actions (see paragraph [58]) and to also place weight on the work the appellant had undertaken in the community since his offending which was independently verified by documentary evidence. Whilst the respondent seeks to challenge the FtTJ's assessment, the FtTJ was best placed to assess the evidence having heard the oral evidence given in the appeal. The FtTJ was not bound to accept the evidence, but she gave reasons which were adequate in detail to enable the reader of her decision why she considered the appellant had rebutted the presumption.

46. In conclusion and when properly analysed, the grounds of challenge are not made out and amount to no more than a disagreement with the decision. It might be said that a different Judge may have reached a different conclusion. However, it is not an error of law to make a finding of fact which the appellate tribunal might not make, or to draw an inference or reach a conclusion with which the UT disagrees. The temptation to dress up or re-package

disagreement as a finding that there has been an error of law must be resisted. As Baroness Hale put it in *SSHD v AH (Sudan)* [2007] UKHL 49 [30]:-

> "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

47. And as Floyd LJ said in *UT (Sri Lanka) v SSHD* [2019] EWCA Civ 1095 [19]:

> "… although 'error of law' is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter."

48. Therefore when addressing the grounds advanced as to adequacy of reasons, adequacy means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why he or she has lost, and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach (see decision of the Court of Appeal in MD (Turkey) v SSHD [2017] EWCA Civ 1958).

49. Having considered the decision reached, the FtTJ was required to consider the evidence that was before the First-tier Tribunal as a whole, and she plainly did so by giving adequate reasons for her decision. Consequently for those reasons the respondent has not established that the FtTJ's decision involved the making of an error on a point of law, therefore the decision shall stand.

Notice of Decision:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law; the decision of the FtTJ shall stand.

Upper Tribunal Judge Reeds

Upper Tribunal Judge Reeds 11 April 2023