IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001629
First-tier Tribunal No: PA/12521/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE RUDDICK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IS
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr Melvin, Senior Presenting Office

Heard at Field House on 18 September 2024

Order 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.

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing IS's appeal against the Secretary of State's decision to refuse his protection and human rights claims.

2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and IS as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

Background

3. The appellant is a citizen of Syria, born in 1969. He says he entered the UK in 2002, and on 27 March 2006, he was arrested while attempting to rob a bank. He gave a false name, nationality and date of birth. On 19 April 2007, he was sentenced at Kingston Crown Court to ten years' imprisonment for robbery and two years' imprisonment on each of two counts of possession of a firearm at the time of committing an offence, one sentence to be served concurrently with his sentence for robbery and one sentence to be served consecutively. He was released on license after serving six years' imprisonment. The precise date on which he was released from detention could not be established in the proceedings below, but it was accepted to have been in 2013.

4. The appellant's immigration history is complex and there is no need to set it out in full here. In summary, he first claimed asylum in January 2008, in the false identity and nationality he had given at the time of his arrest. It does not appear that a decision was made on this claim.

5. In August 2011, the appellant disclosed what is now accepted to be his true identity and nationality. He applied for voluntary return to Syria on the Facilitated Return Scheme and was subsequently issued a Syrian Emergency Travel Document. He withdrew his asylum claim on 8 September 2011.

6. On 22 September 2011, the respondent notified the appellant that he was liable to automatic deportation, and on 26 September 2011, a signed deportation order was made against him.

7. In November 2011, the appellant withdrew his application to the FRS and claimed asylum in his true identity. The respondent refused this claim on 9 November 2012. The appellant appealed, but before the appeal was heard, the respondent withdrew the decisions to make a deportation order against the appellant and to refuse his asylum claim, in order to reconsider them in light of KB (Failed asylum seekers and forced returnees) Syria CG UKUT 00426 (IAC). The deportation order against the appellant was revoked on 22 July 2013, and the respondent granted the appellant three successive periods of discretionary leave, the last of which expired on 14 November 2019.

8. In 2019, the appellant applied for judicial review of the respondent's failure to make a decision on his November 2011 asylum claim. On 13 September 2019, a consent order was issued, by which the appellant was given one month to provide any further evidence in support of his claim, and the respondent agreed to make a decision on that claim within three months.

9. The documents before the Tribunal record that on 26 November 2019, the respondent made a deportation order against the appellant and, subsequently, on 11 December 2019, she decided to refuse his protection and human rights claims but to grant him six months' discretionary leave on Article 15(c) grounds.

10. The appellant appealed against the refusal of his protection and human rights claims, and in a decision promulgated on 26 August 2021, the First-tier Tribunal allowed his appeal.

The First-tier Tribunal decision and reasons

11. In a 48-page decision, the judge set out in considerable detail the appellant's immigration history, criminal offending and several asylum claims, and the nature and content of the evidence before him.

12. The judge then made the following findings about whether the appellant was excluded from international protection:

(i) The appellant had been convicted of a particularly serious crime, such that Article 33(2) of the Refugee Convention would apply and he would be excluded from international protection if he was a danger to the community. Under Section 72(2) of the Nationality Immigration and Asylum 2002 (the 2002 Act), the fact of his conviction gave rise to a presumption that he did constitute such a danger, which it was for the appellant to rebut.
(ii) The judge considered the appellant's evidence before him, the contents of a psychiatric report by an Associate Clinical Professor of Forensic Psychiatry completed in July 2020, the various risk assessments and risk factors set out in an OASys report completed in April 2012, the "very substantial severity" of the appellant's offences, his general lack of credibility (with reference to reasons that were set out in a later paragraph), his lack of further offending since March 2006, the judge's sentencing remarks, that he was now in employment and had accommodation (addressing several of the risk factors identified in the 2012 OASys report), and his age. He then concluded on the basis of this evidence that the presumption of danger to the community was rebutted.

13. With regard to the risk of persecution on return, the judge then found that:

(i) There was no evidence placed before him to suggest that he should depart from KB.
(ii) The appellant was accepted to be a national of Syria, and the judge was satisfied that he was not a supporter of the Assad regime. Therefore, in accordance with KB, he would be at risk of persecution on account of his imputed political opinion if he returned to Syria and was entitled to international protection.

14. The judge then considered the other bases on which the appellant might be entitled to international protection, but only in the alternative, in case he was wrong about the findings set out above [30]. In summary:

(i) The appellant was not a reliable, credible or wholly truthful witness [30] and [31], and his account of why he personally would be at risk on return to Syria was therefore rejected [32].
(iii) Because Para. 339D stated that a person who committed a serious crime was excluded from Humanitarian Protection regardless of whether they remained a danger to the community, the appellant was excluded from Humanitarian Protection [36].
(iv) Although it was the respondent's position that the condition set out in Article 15(c) of the Qualification Directive was satisfied in Syria, this did not equate

to a risk of a violation of Article 3 ECHR. [37] The judge was therefore not satisfied that there was an Article 3 risk.

15. The judge then turned to the appellant's challenge to the respondent's decision to make a deportation order against him. The analysis here followed a similar structure. First, the judge found that because the appellant's removal would be in breach of the UK's obligations under the Refugee Convention, the exception to automatic deportation at s.33(2)(b) of the UK Borders Act 2007 applied, and the making of a deportation order against the appellant was prohibited was by Para. 397 of the Immigration Rules.

16. The judge then made a series of factual findings, again only in the alternative, in case he was wrong about the appellant's entitlement to refugee protection [40]. He found that because the Secretary of State accepted that the level of indiscriminate violence in Syria was such that Article 15(c) applied, there would be very compelling circumstances outweighing the public interest in his deportation. [48] Again, the judge stressed that this was only relevant if his earlier finding that the appellant was entitled to refugee protection was "wrong" [49].

The respondent's grounds of appeal

17. The respondent applied to the First-tier Tribunal for permission to appeal and was granted permission on the following grounds:

(i) Ground One
The judge erred in finding that the appellant had rebutted the presumption that he was a danger to the community and was therefore not excluded from protection as a refugee. Specifically:

a. The judge erred by "not considering that the determination contains no evidence of remorse or insight into his actions" and no evidence that he had addressed the concern expressed in the 2012 OASys report that he continued to minimise his involvement in the offence and its effect on the community; and
b. The finding that the appellant was not a credible witness was evidence of his continued disregard for the law.

(ii) Ground Two
The judge erred repeatedly [at 37, 46; and 48-50] in stating that the respondent accepted that there was an Article 15(c) risk in Syria. The respondent's position was in fact that there was no such risk in Damascus, where the appellant says he is from.

(iii) Ground Three
The judge's error about Article 15(c) impacted his finding about whether there were very compelling circumstances under Section 117C.

18. Prior to the error of law hearing, the respondent submitted a skeleton argument. With regard to Ground One, this argued that the judge had "focussed on the passage of time since the appellant's conviction" rather than on his lack of remorse and poor credibility. Moreover, the 2012 OASys report was not given sufficient weight.

19. With regard to Ground Two, the respondent acknowledged that it was only relevant if Ground One were made out.

The Hearing

20. Prior to the error of law hearing, the appellant's representatives informed the Tribunal that they were withdrawing, as they had been unable to obtain instructions from their client. The appellant did not appear, but we were satisfied that he had been properly notified of the hearing.

21. Mr Melvin agreed that it was appropriate for the hearing to proceed in the appellant's absence.

22. At the outset of the hearing, Mr Melvin handed up the respondent's current CPIN, Syria: Returnees (Version 1.0, June 2022), and confirmed that the respondent was not arguing that we should depart from KB.

23. Mr Melvin then made submissions in line with his skeleton argument.

Analysis

24. The respondent's challenge to the judge's findings regarding Section 72 is nothing more than a disagreement with the judge's assessment of the evidence before him. The respondent is wrong to suggest that the judge relied primarily on the passage of time. As set out in detail above, it was one of a number of factors he took into account. Nor is it correct to say that the judge failed to consider the OASys report. The judge quoted from it at [10](b) and (at length) at [19], while at [20](c), the judge considered the appellant's current circumstances in light of the risk factors identified in the report. The judge also specifically says that he had the appellant's poor credibility "in mind" at the outset of the Section 72 analysis [20] and took it into account again at [20](e), before deciding to nonetheless accept the conclusions of the 2020 psychiatric report.

25. The judge's finding that the appellant had rebutted the presumption that he was a danger to the community was carefully reasoned, supported by detailed reference to all of the evidence before him, including the OASys report, and was clearly open to him.

26. The respondent's challenge to the judge's Section 72 findings therefore fails.

27. The judge's findings with regard to Section 15(c) were, as clearly stated in the decision, set out only in the event that he was wrong about the appellant's entitlement to refugee protection. The is therefore immaterial in light of our decision on Ground One. It is a matter of some concern, however, that the respondent sought permission to appeal on the ground that the judge was wrong to state that she accepted that there was an Article 15(c) risk to the appellant, when this is precisely what the respondent had stated in the decision on appeal. In any event, Mr Melvin accepted that, in light of the advice in the more recent CPIN, it could no longer be maintained that Damascus was a place to which the appellant could safely be returned.

28. Accordingly we dismiss the Secretary of State's appeal and uphold the judge's decision.

Notice of Decision

29. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The Secretary of State's appeal is dismissed and Judge Bennett's decision to allow the appellant's appeal stands.

Signed: E. Ruddick
Upper Tribunal Judge Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 September 2024