Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01234/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 25th September 2018	**On 16th October 2018**

Before

DEPUTY UPPER TRIBUNAL KELLY

Between

HEMIN ALI
(ANONYMITY NOT DIRECTED)

Appellant

and

SECRETARY 0F STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Patel, Counsel instructed by Parker Rhodes Hickmotts
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This decision follows a resumed hearing of the appeal against the decision of First-tier Tribunal Judge I Hillis, promulgated on the 25th August 2017, to dismiss the appellant's appeal against refusal of his Protection Claim. The appeal has a somewhat complicated

background, which I endeavoured to summarise at paragraphs 2 and 3 of my decision promulgated on the 27th April 2018. In that decision I concluded that the judge had erred in respect of only one of the four grounds of appeal for which permission to appeal had been granted.

2. Given that Ms Patel made several attempts to widen the scope of the resumed hearing, I shall set out the limited basis upon which I found that Judge Hillis had made an error of law and the reasons why I considered it necessary to conduct a resumed hearing:

> The second ground arises from the judge's decision that the appellant was excluded from humanitarian protection. In the course of explaining why he found that the appellant's conviction was "a serious crime" for the purposes of paragraph 339D of the Immigration Rules, the judge relied upon what he described at paragraphs 32 and 33 as Ms Patel's 'concession' in this regard. The grounds, which were settled by Ms Patel, state that she had only accepted this "… within the context of the automatic deportation provisions i.e. sentenced to imprisonment for more than 4 years". I confess that I find this assertion somewhat surprising given that (a) the appeal had not been remitted on this basis, (b) Judge Roberts had specifically preserved Judge Dearden's decision under Article 8 (wherein the threshold of 4 years' imprisonment is directly relevant under section 117C of the 2002 Act), and (c) Ms Patel had confirmed that the appellant was no longer pursuing his appeal under Article 8 (paragraph 23). I am nevertheless prepared to accept that due to a degree of confusion and misunderstanding Ms Patel may not have appreciated that the appellant's conviction was germane to the question of whether the appellant fell to be excluded from humanitarian protection and that she did not therefore have a fair opportunity to argue the point. I am fortified in reaching this conclusion by the fact that the respondent does not appear to have raised the issue in either her Reasons for Refusal Letter or in submissions at the hearing before the First-tier Tribunal. This gives rise to an issue of potential unfairness. I will therefore provide Ms Patel with an opportunity to make further submissions to me upon this issue at a resumed hearing. This is on the basis that not only must justice be done but must manifestly be seen to be done and the appellant should not therefore assume that the outcome of the appeal will necessarily be affected thereby. It may however become relevant if the appellant were to succeed in challenging my decision on the third and fourth grounds (below).

3. I would add that the appellant has the option of pursuing a fresh Protection Claim based on country guidance issued since Judge Hillis promulgated his decision. It is therefore right that he should know where he stands upon the issue of exclusion before deciding whether to do so. I make this point because Ms Patel sought to persuade me that I should reopen and reconsider the whole issue of internal armed conflict in Iraq, with a view to allowing the appeal on Article 3 grounds should she fail in her argument that he is not excluded from Humanitarian Protection. It is however far too late to consider it

within the context of the present proceedings. Moreover, I have already specifically held that Judge Hillis did not make an error of law in his assessment of this issue (see paragraph 6 of my earlier decision). This decision will therefore be confined to the issue of whether the appellant fell to be excluded from Humanitarian Protection under paragraph 339D of the Immigration Rules as I had originally intended it should be.

4. Judge Hillis set out the terms of paragraph 339D of the Immigration Rules at paragraph 29 of his decision, the relevant part of which reads:

> A person is excluded from a grant of humanitarian protection … where …:
>
> (i) …
> (ii) …
> (iii) there are serious reasons for considering that they constitute a danger to the community or to the security of the United Kingdom; or
> (iv) there are serious reasons for considering that they have committed a serious crime; or
> (v) …

5. The conviction that engages the potential operation of the exclusion provisions is for an offence of wounding with intent to cause grievous bodily harm committed on the 25th November 2010 for which the appellant was sentenced to a term of imprisonment of 10 years on the 28th March 2011. The appellant was part of what the sentencing judge described as a joint premeditated attack on the victim who was repeatedly stabbed causing what fortunately proved to be non-fatal injuries.

6. Ms Patel drew my attention to various passages in an OASyS report dated the 20th November 2015. This shows that the appellant continues to be subject to a significant number of stringent licence conditions [L38 of the appellant's bundle of documents]. It also shows that the appellant achieved the status of 'enhance prisoner' on the basis of his good behaviour whilst in prison. Ms Patel also reminded me that the appellant had been released from his sentence of imprisonment and subsequent immigration detention on the 22nd December 2015 (now approaching three years ago) and had not since come to the adverse attention of the authorities. Moreover, he continues to receive the ongoing support of the Probation Service. Given all these factors, Ms Patel argued that it could not be said that there were serious reasons for considering that the appellant currently constitutes a danger to the community of the United Kingdom.

7. Whilst attractively framed, I reject Ms Patel's arguments. It is true that the OASyS report is now nearly three years' old. It is nevertheless the most recent risk assessment before the Tribunal. With regard to the likelihood of the appellant causing serious harm to others, the risk to children and known adults is assessed as being 'medium' whilst the risk to the general public is assessed as 'high'. I also note that the appellant at that time continued to deny the offence of which he had been convicted by a jury and harboured "considerable antipathy to the victim".

8. Further, and in any event, it is difficult to see how the offence of wounding with intent to cause grievous bodily harm can be viewed as anything other than "serious". Both the nature of the offence itself ("grievous" meaning 'really serious') and the term of the sentence of imprisonment (10 years) demonstrates the seriousness of the offence. Additionally, the sentencing judge described the offence as a "deliberate, premeditated, and planned attack for revenge in which knives were taken to the scene for the purpose of inflicting serious bodily injury". I thus have no doubt that this was a very serious offence indeed.

9. It follows from the above that the appellant is excluded from Humanitarian Protection and, should he choose to make a fresh claim based on the humanitarian situation in Iraq, the most that he could hope for is to be granted the limited protection of Article 3 of the Human Rights Convention.

Notice of Decision

The appeal is dismissed on all grounds.

Anonymity not directed

Signed: Date:
1st October 2018

Deputy Upper Tribunal Judge Kelly