



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00026/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14 May 2018

Decision & Reasons Promulgated
On 21 May 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

AK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Brown, Counsel instructed by Harrow Law Centre

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following the identification of a material error of law in the decision of First-tier Tribunal Judge Rodger (the judge), promulgated on 30 November 2017, in which she allowed the appellant's article 3 ECHR appeal against the respondent's decision dated 19 January 2017 refusing his protection and human rights claims and ceasing his refugee status, but upheld the respondent's certification under Section 72 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) of his asylum claim. Section 72 establishes a

rebuttable presumption that a person convicted in the UK of an offence and sentenced to a period of imprisonment of at least 2 years has been convicted of a particularly serious crime and constitutes a danger to the community. On 25 July 2013 the appellant was convicted of a robbery and received a sentence of 7 years imprisonment. As the judge upheld the presumption she dismissed the protection appeal to the extent that it was based on the 1951 Refugee Convention. Although the appellant additionally relied on article 8 ECHR to resist his deportation, the judge failed to consider the article 8 grounds of appeal. The judge allowed the human rights appeal under article 3 ECHR as the appellant's removal to his country of nationality, Eritrea, would result in a real risk of serious ill-treatment. Although the respondent initially sought to appeal the article 3 decision this was later withdrawn. It is now common ground that the appellant's removal to Eritrea would expose him to a real risk of torture or inhuman or degrading treatment or punishment on the basis that he would be perceived as a draft evader, or on the basis that the conditions of military service would amount to a breach of article 3.

2. In its 'error of law' decision promulgated on 1 March 2018 the Upper Tribunal found that the First-tier Tribunal materially erred in law. I briefly summarise the errors of law.
3. The judge was provided with a large bundle of personal and subjective evidence including witness statements from the appellant and his partner, NJ, from his mother and from other individuals and a letter from his support worker, Mr Frank McDonald. The judge heard oral evidence from several witnesses including NJ, the appellant's mother and sisters, and Mr McDonald. The judge summarised some of the evidence including that relating to courses undertaken by the appellant, evidence that he had abstained from both drink and drugs since November 2012, the OASys risk assessment report and other probation documents, and the report from Frank McDonald who maintained that the appellant was both rehabilitated and unlikely to offend. The judge also made brief reference to additional letters of support without identifying who they came from or the content of those letters.
4. The judge accepted that the appellant had taken significant steps to turning his life around and making something of his life. The judge however placed weight on the appellant's apparent prevarication in accepting his guilt in relation to the trigger offence, as detailed both in his oral evidence at the hearing and the OASys Report dated 16 August 2017, in which he did not accept responsibility for his participation in the 2012 robbery. The appellant's reluctance to accept responsibility for the trigger offence suggested that he did constitute a danger to the public. In reaching this conclusion the judge took into account the appellant's lengthy offending history and attached weight to the OASys report which assessed the appellant as being at medium risk of reoffending. The judge made reference to the percentage risks detailed in the OASys report and, although noting that the appellant had abstained from drugs and drink since November 2012 and that he was a good prisoner who had complied with all probation and support requirements, concluded that there was insufficient evidence before her to rebut the Section 72 presumption. In so

concluding the judge made brief reference, at paragraph 34 of her decision, to the continued support from Kairos (a support organisation), and his family. That constituted the extent of the judge's assessment of the evidence from the appellant's family.

5. The Upper Tribunal was satisfied that the judge failed to engage with the supporting evidence in respect of the appellant's relationship with NJ. She gave a statement of some length and gave oral evidence. Whilst the judge acknowledged that she gave evidence and made brief reference to NJ in the decision, there was simply no assessment of the content of NJ's statement or her oral evidence. That oral evidence indicated that her relationship with the appellant provided stability and support and that the relationship constituted a protective element that reduced the likelihood of the appellant committing any further offences. This was a relevant factor that needed to be considered in assessing whether the appellant constituted a danger to the community. The Upper Tribunal was additionally troubled by the judge's significant reliance on the percentage risk assessments contained in the OASys Report in the absence of adequate consideration of the underlying evidence, including the oral evidence given by Mr McDonald. It could not be safely said that it was immaterial in the sense that, had the judge considered that evidence, she would inevitably have reached the same conclusion. The Upper Tribunal was additionally satisfied that the judge erred in law by failing to make any findings in respect of the article 8 aspect of the appeal or to reach any conclusions in respect of the article 8 claim.
6. The rehearing of the appeal was adjourned to enable further evidence to be provided in respect of the article 8 appeal and the certification under s.72 of the 2002 Act. The resumed hearing was listed for 10 April 2018. On that date I drew the parties' attention to the absence of any consideration by the First-tier Tribunal of the respondent's decision to cease the appellant's refugee status under paragraph 339A of the immigration rules, by reference to Article 1C(5) of the Refugee Convention. The case was adjourned to enable the respondent to produce a skeleton argument in respect of his position on the cessation of refugee status. Just prior to the adjourned hearing, now listed for 14 May 2018, Mr Bramble indicated that the respondent will not be pursuing cessation of the appellant's refugee status given the now unchallenged finding by the First-tier Tribunal that he would be exposed to a real risk of serious ill-treatment if removed to Eritrea. The principle issues now in contention are the s.72 certification and the article 8 claim.

Background

7. The appellant is a national of Eritrea. He was born in Teseney, which is now in Eritrea although it was then part of Ethiopia. There remains uncertainty as to his date of birth. The respondent has recorded a number of different dates of birth for the appellant, and the most recent decision attributed 10 August 1976 as his date of birth. The appellant's representative in the 'error of law' hearing, Ms Braganza, maintained that his true date of birth was 10 August 1982 and that the other date

of birth was the result of a stake in transposing the Ethiopian calendar into the Gregorian calendar. This was maintained at the remade hearing. There is insufficient evidence before me to enable me to determine the appellant's actual date of birth. He entered the United Kingdom on or around 12 or 15 November 1990. He was granted refugee status on 5 January 1991 with accompanying leave to remain, and in December 1993 he was granted indefinite leave to remain as a refugee.

8. The appellant has been convicted of criminal offences on 28 occasions in respect of 45 different offences including, *inter alia*, offences against the person, offences against property, theft related offences, public order offences and drug related offences. In his decision dated 19 January 2017 the respondent set out the details of the appellant's criminality (paragraphs 4 to 16), which included 4 weeks detention in a Young Offenders Institution for shoplifting in August 2002, 3 years detention in a Young Offenders Institution for attempted robbery in November 2003, 30 months' imprisonment for robbery in December 2005, 56 days imprisonment in 2009 for using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence, 4 months' imprisonment in August 2009 for battery, 3 weeks imprisonment in June 2010 for using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence, and 6 weeks imprisonment in July 2011 for common assault. The trigger offence leading to the decision to refuse his protection and human rights claims and to make a deportation order occurred on 25 July 2013 when he was convicted of a serious robbery that was committed on 29 April 2012 and sentenced to seven years' imprisonment. It is not disputed that the appellant is an individual subject to Section 32 of the UK Borders Act 2007 as a foreign criminal. Nor is it disputed that he has been convicted of a particularly serious crime.
9. On 19 January 2017 the respondent signed a Deportation Order under section 32(5) of the UK Borders Act 2007, having concluded that section 33 of that Act did not apply. On the same date the respondent refused the appellant's protection and human rights claims and issued a certificate under Section 72 of the 2002 Act. The appellant had a right of appeal against the refusal of his protection and human rights claims under s.82 of the 2002 Act and duly lodged a Notice of Appeal.

The evidence before the Upper Tribunal

10. I have considered the documentary evidence contained in the two bundles of documents relied on by the appellant, the 1st bundle prepared for the First-tier Tribunal hearing on 13 November 2017, the 2nd bundle prepared for the remade Upper Tribunal hearing. The documents in the 1st bundle include, *inter alia*, a witness statement from the appellant dated 6 November 2017, a witness statement from NJ dated 5 November 2017, a witness statement and letter of support from EK, the appellant's older sister, a witness statement and letter of support from ATK, the appellant's younger sister, a witness statement and letter of support from AG, the appellant's mother, witness statements and letters of support from AK and TK,

the appellant's brothers, various letters of support from Karda Badwah, the appellant's Offender Manager, an OASys Assessment completed on 23 February 2017, Pre-Sentence Reports dated 5 November 2005 and April 2011, a letter of support dated 20 October 2017 from Radha Allen, a Service Manager at 'BSAFE', letters of support from the Addiction Recovery & Clinical Centre, a letter of support from Frank McDonald, Support Worker for the Kairos Community Trust dated 26 October 2017, various certificates awarded to the appellant during his detention including drug and alcohol awareness certificates and certificates relating to substance misuse, and Drug Treatment Post Program review Minutes, and mandatory drug test results. The 2nd bundle include additional witness statements from the appellant and NJ dated 5 April 2018, further letters of support from, amongst others, Frank McDonald and Karida Badwah, a further OASys report issued in February 2018, further statements of support from the appellant's mother and brother AK, and further emails of support from ATK and EK. I have additionally considered a skeleton argument prepared by Ms Brown, a 2nd additional witness statement prepared by the appellant's mother and a 2nd additional witness statement prepared by AK, and a further letter from Radha Allen.

11. At the hearing the appellant gave oral evidence, as did NJ and his sisters ATK and EK. The appellant's mother had travelled to America and was unable to attend the hearing. I maintained a record of the examination in chief and cross examination of the appellant and his witnesses and have considered their evidence with care. I will refer to the material elements of the witnesses' written and oral evidence, and the material elements of the documentary evidence in my assessment below.

Legal framework

12. Section 72 of the 2002 Act is headed 'Serious criminal'. It reads, in material part,
 - (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), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
13. In her decision dated 19 January 2017 the respondent issued a certificate that s.72(2) applies. As the appellant relies on the ground that to remove him from the UK would breach the country's obligations under the Refugee Convention, sections 9 and 10 of the 2002 Act require me to begin substantive deliberation on the appeal by considering the certificate and, if in agreement that the presumption under

subsection (2) applies, I must dismiss the appeal in so far as it relies on the appellant's Refugee Convention claim. The burden rests on the appellant, to the balance of probability standard, to rebut the presumption.

14. In EN (Serbia) v Secretary of State for the Home Department & Anor [2009] EWCA Civ 630, the Court of Appeal held, at [45], "So far as "danger to the community" is concerned, the danger must be real, but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition, he is likely to constitute a danger to the community."

15. Paragraphs 398 to 399A of the immigration rules apply to persons facing deportation.

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if -

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

16. Section 117A of the 2002 Act requires a Tribunal, when considering the public interest question, to have regard, in particular, to the factors listed in section 117B, and, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C. Section 117C lists additional public interest considerations in cases involving foreign criminals.

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where –

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

Assessing whether the applicant has rebutted the presumption that he constitutes a danger to the community

17. The appellant has a quite appalling criminal history. I remind myself of his more serious offences outlined in paragraph 8 above. The appellant's offending consisted in large part of the infliction of violence or causing the apprehension that violence would be inflicted. I note in particular the extremely serious robbery that resulted in the seven-year custodial sentence. I have considered the sentencing remarks of Judge Stern QC who noted that the appellant communicated with armed robbers on 2 occasions prior to them bursting into a bookmaker shop, forcing a member of staff to open a door by putting a sword to his back and stealing about £200. The appellant was instrumental in informing those who carried out the actual robbery when it was safe to do so. Although he had no direct involvement in the raid, but acted as a lookout, the circumstances of the offence placed staff and customers alike at risk of serious harm. The judge was satisfied that it was a professionally planned robbery and the robbers knew at every stage that they could count on the appellant. The Sentencing Judge noted that the appellant had "a long-standing difficulty with drugs" and now had a "long-standing difficulty with drink."
18. I have attached significant weight to the quantity and nature of the appellant's criminality. The sheer number of offences (I remind myself that he has been convicted for 45 offences on 28 occasions), indicating that the appellant has a propensity to re-offend, their escalating seriousness, and the grave nature of his often-violent offending, reflected in his numerous sentences of imprisonment including, but by no means limited to, his sentence in July 2013 to 7 years imprisonment, suggests the appellant constitutes a danger to the public. This weighs heavily against the appellant's rebuttal of the s.72 presumption.
19. I must however consider all relevant circumstances surrounding his offending in determining whether he does, in fact, constitute a danger to the public. The Pre-Sentence reports from 2005 and 2011 position the appellant's alcohol and substance abuse as central to his offending. Judge Stern QC acknowledged the appellant's long-standing difficulty with substance abuse in his sentencing remarks in 2013. The OASys report, completed on 23 March 2017, also acknowledges this long-standing struggle. Throughout the 45-page report reference is made to the addiction to drink and drugs that appears to have motivated most of his criminal offences. The report noted that the majority of the appellant's offences were drug and alcohol-related and that, for most of them, he could not remember the details. He acquired a Class A drug habit at a young age which he funded through the proceeds of crime, and had associated, again from a young age, with a negative peer group through a perceived need to fit in, and then developed an addiction to alcohol. The appellant contends that he is no longer in the grips of his previous addictions, and that, as a result, he no longer constitutes a danger to the community.

20. The February 2017 OASys report indicated that the appellant had a strong and long-standing dependence on alcohol. On his release however, he was accepted into Kairos Sober Living accommodation and participated in all activities associated with addressing his alcohol issues. I note that the appellant has now abstained from alcohol for approximately 5 years. The February 2017 OASys report said the appellant presented as someone "...very motivated to turning his life around and engaging with the services of Kairos and maintaining support of his family." He recognised the importance of engaging with all relevant partnership agencies as well as maintaining the support of his family, and was determined that he would never drink alcohol again. The same report noted that the risk of reoffending could increase if the appellant returned to alcohol misuse and associating with negative peers. There is however no suggestion in any of the documents before me that this has occurred.
21. I have considered several letters written throughout 2017 by Karida Badwah, Offender Manager for the appellant. These letters indicated that the appellant attended an after-care program following his release and was doing "extremely well." He had completed lots of work around his offending behaviour and the impact this would have had on his victims. He was said to have a "... clear desire to turn his life around." The appellant has "... Done everything he can to implement the changes required to live a sober and crime free lifestyle." He has never missed an appointment with probation and there were no concerns regarding relapse or reoffending. The appellant was said to be "... currently stable and on a positive path of rehabilitation."
22. While a serving prisoner the appellant tested negative to mandatory drug tests, as evidenced by certificates contained in his 1st bundle. The February 2017 OASys report indicated that, following his release, the appellant was subject to random testing. There is nothing in any of the probation documents suggesting that he has returned a positive test to drugs. The report indicated that he had engaged well with the RAPt (Rehabilitation For Addicted Prisoners Trust) team and his 1st bundle contained Certificates of Achievement in the Stepping Stones Programme, a certificate of attendance in respect of a workshop on cocaine and cannabis awareness, and a certificate confirming that the appellant had completed the three phase RAPt Substance Abuse Treatment Programme.
23. There is other evidence that the appellant has genuinely decided to turn his life around. While a serving prisoner he was a student on the Personal and Social Development, Substance Misuse Awareness Course in 2014, when his attitude, behaviour and attendance was said to be very good. He completed the course and gained a Substance Misuse Awareness Level 2 Certificate. A letter, dated 20 October 2017, from Radha Allen, Service Manager of BSAFE, indicated that the appellant had completed a Recovery Champion Course, a self-development course leading people out of treatment, and had signed on to the November intake in order to graduate. He was said to be "highly motivated with a constructive attitude" and had started volunteering at the BSAFE weekend service, which is run

by volunteers wanting to give back to the community and help other recovering addicts by giving them a safe space at weekends when all other services are closed. The appellant had also signed up with a partner agency, Project Stride, which helped people with addiction backgrounds back into work, and had also signed up with PLIAS to try to further his education. The appellant was said to be a valued member of the team, was hard-working and a great communicator. A further letter written by Ms Allen, dated 6 April 2018, confirmed that the appellant graduated in December 2017 and has since been back to support and encourage the next intake of Recovery Champions. The appellant earned himself the volunteer of the month award in January 2018 and participated in a Junior Citizenship scheme, educating year 7 pupils about alcohol and nicotine.

24. Further evidence that the appellant has finally overcome his substance abuse is seen in the letter, dated 26 October 2017, from Tarja Davidson, Assistant Psychologist of the Addiction Recovery & Clinical Centre, noting that the appellant is a service user, successfully completed a 12-week program and continued to engage with the service by attending 1-2-1 counselling sessions weekly since 28 June 2017. The appellant was described as being highly motivated to achieve a positive outcome, maintained a good attendance and remains abstinent from alcohol. Another letter from Fathiya Abdirazak of the organisation SOVA, indicated that the appellant gained a Substance Misuse Counselling Level 2 qualification with 2 ongoing assignments left to complete. The appellant showed money budgeting skills and solved his debt problems. The appellant demonstrated initiative and determination in completing tasks and had shown an interest in becoming a mentor with the organisation in the future. A letter dated 26 October 2017 from Frank Donald, a Support Worker with the Kairos Community Trust, confirmed that the appellant had been deemed suitable for one of the organisation's 3rd stage recovery homes and that on 28 June 2017 he started to engage with NHS counselling service to address his PTSD issues. Mr Macdonald corroborated the evidence from Ms Allen in respect of the appellant's voluntary position at BSAFE and his completion of the Recovery Champions course. The appellant had fully complied with all expectations within Kairos and appeared, "... to have turned away from his previous way of being and has developed a drug/alcohol free lifestyle and presents today as being [a] responsible productive member of society." The appellant often shared his feelings of guilt, shame and remorse and was seen as a role model to many in the house supporting people wishing to address their substance misuse issues. The appellant was totally abstinent from all mood-altering substances, attended '12-step fellowship' meetings four times a week and consistently helped others. He also had commitments at local groups giving his time freely to support young people. The appellant was said to have taken full responsibility and ownership for his actions and was making the necessary changes in his life to support himself in leading an alcohol/drug crime free lifestyle.

25. I additionally note that the appellant has undertaken a number of courses whilst in prison including literacy and numeracy work, health and safety in the workplace,

employability and life skills and has studied plumbing and has various plumbing related certificates. This is a further factor, albeit a relatively slight one, that supports the appellant's claim that he has undergone a 'sea change' and has put his criminality behind him. The February 2017 OASys report noted that a lack of direction had been a strong contributing factor to the appellant's offending activity.

26. The February 2017 OASys report concluded that the appellant presented a medium risk of serious harm to the public, and medium risk of reoffending, with a probability of proven reoffending within the 1st year at 57%, and at 73% in the 2nd year. A further OASys report, dated 29 March 2018, confirmed that the appellant had been compliant and had abstained from alcohol. The assessed risk of causing serious harm to the public was now low. This was a reduction from the February 2017 OASys report. He remained however at medium risk of reoffending, with the same percentile assessment. The circumstances said to be likely to increase risk included associations with negative peers, relapse into alcohol misuse, poor emotional control and poorer problem-solving skills, lack of victim empathy and poor financial management. I note that, at the date of the hearing in May 2018, there was no suggestion that the appellant had associated with negative peers or that he had relapsed into alcohol misuse. Factors identified as likely to reduce risk included engagement and participation with the Kairos support worker and participation in group therapy sessions, engagement in counselling to address emotional needs, family support and secure employment. A letter from Frank McDonald dated 6 February 2018 confirmed that the appellant has done "extremely well" since entering the Kairos accommodation and was now ready to move on to independent living. The appellant was said to have mixed well with other residents and had taken responsibility for his own recovery as well as helping others voluntarily. The appellant was described as being a "great example" to others, had been active in his voluntary work for 6 months and was now ready for change.
27. Whilst I attach appropriate weight to the percentile assessment of the appellant reoffending, I note that the assessment tool combines static data with dynamic factors relating to the appellant. There is no indication that the author of the March 2018 OASys report interviewed or considered evidence from the appellant's family or partner, or that the author was aware of the employment opportunities now offered by the appellant's family. In his statement dated 5 April 2018 AK indicated that he owned his own company, Emergency Heating and Plumbing, and that he was willing to help the appellant with his training and that, if he qualifies as a gas safe engineer, the appellant could work as a subcontractor. He would loan the appellant money to fund his training which could be paid back once he was employed. Some details of AK's business were provided and there was no challenge to his assertions at the hearing. In addition, in both her email dated 5 April 2018 and her oral evidence at the hearing, ATK indicated that she would be happy to employ the appellant to support her in running her new company, 'Amatte Ltd', which is a direct trade coffee business. There was no challenge to this evidence at the hearing. I find that the offers of employment and training to the

appellant are genuine and that they offer the appellant both stability and a source of income. I am additionally satisfied that the offers of employment demonstrate a newfound belief on the part of the appellant's family that he will no longer engage in behaviour leading to criminality.

28. While it is concerning to note that, according to the February 2017 OASys report, the appellant did not accept responsibility for the April 2012 robbery, maintaining that he was there by chance and denying having anything to do with the males, he has subsequently fully accepted responsibility and ownership for his actions. He indicated in his November 2017 statement that he was ashamed of his offending and expressed deep regret for his actions, and the letter from Frank Macdonald, of the Kairos Community Trust, indicated that the appellant had taken full responsibility and ownership for his actions. There was no challenge to this evidence by the Presenting Officer.
29. In his statements dated 6 November 2017 and 5 April 2018 the appellant recalled his traumatic childhood as a refugee living in Sudan and the difficulties he encountered when he moved to the UK to live with his sister, including bullying and racial abuse. He explained that he got to a point where he realised he was hurting his friends and family, and that his own family stopped talking to him one point. The appellant maintains that his crimes were committed to feed his addiction and that he now accepts responsibility and that in the past 5 years he has completed the process of rebuilding himself. He continues to volunteer for BSAFE and had attended a 'Drink and Drugs News' conference in Birmingham in February 2018. He met NJ before he was incarcerated and she has been there for him "every step of the way" since his release in January 2017. The appellant indicated that he has been open and honest with NJ, loved and respected her, was full of gratitude to her, and wanted to act as a role model for her son, M. He did not want to disappoint NJ or his family. The appellant resided with NJ while she had an operation for glaucoma, although he was currently residing with his mother. As the appellant is currently unable to work it was difficult to make plans for the future including marriage. In his oral evidence the appellant confirmed his volunteering work with BSAFE and explained that he is doing this work because he had an addiction problem he wants to others in the same situation. He confirmed in cross-examination that he was on licence until 24 July 2020. When he came out of prison in the past he would often go back straightaway, but he explained that he was now thinking in a different way. In re-examination he confirmed that he now stayed away from the wrong people and there were no temptations in his life. I found the appellant gave his evidence in a forthright and open manner. Taking full account of the appellant's past dishonesty, and having considered the supporting documents from the various agencies and organisations with whom the appellant has engaged, including the Probation Service, I found him to be an honest witness in terms of his belief that he has undergone a significant and permanent change since overcoming his addictions.

30. In her statements NJ indicated that she had no time for “time wasters” and that if she “smelt a rat” she would have told the appellant to go away. Although she had initial reservations about the appellant, both as a mother and a woman, he met her expectations and won her over. The appellant was very close to her son, M, and he talked to M about bullying and coping strategies. She confirmed that he no longer drinks or takes drugs. In cross-examination NJ said she would “not stand for it” if the appellant was drawn to criminality and explained, in re-examination, that she and him had long conversations about his past and that they had developed trust and that they were going in one direction as a family unit. NJ gave her evidence in an open and straightforward manner. Her evidence was consistent with the documentary evidence before me, and internally consistent. There was no indication that NJ was attempting to embellish her evidence. While taking account of the inherent possibility of bias from a partner, I am nevertheless satisfied that NJ is an honest witness. This is particularly relevant in respect of her evidence that the appellant has continued to abstain from alcohol and drugs.
31. The appellant’s mother was unable to give evidence as she is in the United States of America. I can only therefore attach limited weight to her evidence given the absence of any opportunity to probe or test her assertions. When assessing the evidence from the appellant’s mother, and indeed his siblings, I take full account of the possibility of bias emanating from the relationship between close family members. The appellant’s mother noted a significant contrast between his previous behaviour, which had become increasingly challenging, and his behaviour since his conviction in July 2013. The appellant had not touched a drop of alcohol for the last 5 years. She indicated that the appellant now listens to advice and that NJ was a good influence on him. The appellant was now making good the time he lost with his mother and his other family. The appellant’s mother confirmed that he always talked about the volunteering work as a support worker.
32. In their oral evidence the appellant’s sisters, EK and ATK, both described the change in the appellant since his last conviction. ATK described the change as “dramatic” and that the appellant was making tangible efforts in his volunteer work to contributing to society. There had also been a dramatic change in the way he conducted himself with his family. In the past he had often lost his temper but now he would think before addressing questions. There was also a positive change in the way that he interacted with his nieces and nephews. ATK explained that she has now started enjoying his company more and more and that she had seen a clear difference in him. He is now able to listen to what she says. EK explained that the appellant now spends time with her and her family and that she, her 4 children and the appellant often go out. When he was taking drugs he was restless but he is no longer restless. This evidence reflected the written evidence from the appellant’s siblings in which they described the appellant’s pride in his achievements of the past 5 years and his motivation to help other people with their addictions. Both siblings expressed their belief that the appellant had been sober for the past 5 years. There was no challenge by the Presenting Officer to the evidence from ATK or EK in respect of their perception of the change in the appellant since his last criminal

offences. There was no suggestion that either of the appellant's sisters gave incredible evidence. I am satisfied that they have witnessed a material change in the appellant's behaviour since his last conviction.

33. I take full account of the fact that the 2005 Pre-Sentence report placed the appellant at high risk of reoffending and medium risk of harm to the public, and that the 2011 Pre-Sentence report also placed the appellant at high risk of reoffending and medium risk of serious harm to the public. These assessments however occurred when the appellant was still very much in the grip of his substance abuse, when he did not have the emotional support of a partner, and in circumstances where he had not evidenced a consistent determination to engage with the various agencies able to provide support.
34. Having carefully considered the factors identified above weighing in favour of the presumption that the appellant constitutes a danger to the community, I am persuaded, having holistically regard to all the evidence before me and for the reasons given above, that the appellant does not constitute a danger to the public. I find that the danger to the public principally arose as a result of the appellant's addictions, initially to drugs and then alcohol. The evidence identified above strongly suggests that the appellant has permanently overcome his addiction. I have concluded, having fully considered the assessment contained in the OASys report, that the appellant is unlikely to re-offend. He now has strong support from his partner which provides further stability in his life and is now very motivated to assist others with their addictions. Although he has only been released since January 2017 he has not re-offended and there is no indication at all that he has touched alcohol or associated with those who may exercise a negative influence. The offers of potential employment and training from his siblings, and their additional support, additionally lead me to conclude that the presumption under s.72 of the 2002 Act has been rebutted.
35. The respondent, through his Presenting Officer, has indicated that he will not be pursuing cessation of the appellant's refugee status. There has been no challenge to the First-tier Tribunal's decision that the appellant's removal would breach article 3. The First-tier Tribunal concluded that the appellant would face a risk of serious ill-treatment as, *inter alia*, a perceived draft evader. In these circumstances I find that the appellant's removal would constitute a breach of the Refugee Convention. I therefore allow the appeal on the grounds that the appellant's removal would breach the U.K.'s obligations under the Refugee Convention.

Article 8

36. I am additionally obliged to consider the appellant's appeal under article 8. Under paragraph 398 of the immigration rules the appellant must show that there are very compelling circumstances over and above those described in paragraphs 399 and 399A. Section 117C (6) of the 2002 Act is in similar terms in respect of exceptions 1 and 2 detailed in s.117C (4) & (5). The appellant faces a real risk of torture or

inhuman or degrading treatment or punishment if deported to Eritrea. If he is subjected to this treatment or punishment it will undoubtedly constitute a serious infringement of his moral and physical integrity, which is protected by article 8. I am consequently satisfied that the real risk that the appellant will suffer article 3 ill-treatment is a very compelling circumstance sufficient to render his removal disproportionate under article 8.

Notice of Decision

The appellant has rebutted the presumption under s.72 of the Nationality, Immigration and Asylum Act 2002.

The appeal is allowed on the basis that the appellant's deportation would breach the U.K.'s obligations under the Refugee Convention.

The appeal is allowed on the basis that the appellant's removal from the UK would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

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

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



15 May 2018

Signed

Date

Upper Tribunal Judge Blum