



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: RP/00047/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2018**

**Decision & Reasons
Promulgated
On 18 December 2018**

Before

**THE HONOURABLE MRS JUSTICE ANDREWS DBE
UPPER TRIBUNAL JUDGE PITT**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**PATIENCE [C]
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

1. This is an extempore decision given at the end of the hearing.
2. This is an appeal against the decision of First-tier Tribunal Judge E M M Smith issued on 20 August 2018. The decision of Judge Smith allowed the appeal of Ms [C] against a decision dated 11 March 2018 revoking her refugee status and seeking to deport her.

3. Permission to appeal to the Upper Tribunal was granted on 10 September 2018 by the First-tier Tribunal.
4. For the purposes of the hearing and this decision it is convenient to refer to Ms [C] as “the appellant” and the Secretary of State as “the respondent” reflecting their positions before the First-tier Tribunal.
5. The background to the matter is that, having come to the UK in 2002, Ms [C] was granted refugee status following a successful First-tier Tribunal appeal in 2009. An application in 2014 for indefinite leave to remain after 5 years’ leave as a refugee was not granted but Ms [C] was granted further discretionary leave until 21 April 2018.
6. However, alongside that immigration history, Ms [C] was convicted of two criminal offences. The first was in 2011 for use of fraudulent documents for which she received a sentence of imprisonment of 8 months. The more serious matter and what can be referred to as the index offence was for dangerous driving for which she was convicted on 10 May 2016 and on 24 May 2016 sentenced to 12 months imprisonment.
7. For the purposes of this decision it is not necessary to go into the details of the index offence and the personal consequences, both for the victim of the road accident and for Ms [C] and her family. What is relevant is that the index offence gave the Secretary of State cause to look at her refugee status and in the decision of 11 March 2018 to revoke that status and make a decision to deport Ms [C].
8. The appeal before the First-tier Tribunal required, firstly, a decision on whether the revocation of refugee status was correct in law and then, if it was not, whether the decision to deport could stand. The First-tier Tribunal allowed the appeal, finding that the decision to revoke refugee status was not correct and that, as a result, deportation was not lawful.
9. The Secretary of State’s ground of challenge is straightforward. The argument is that when finding that refugee status should not have been revoked, the judge applied the wrong legal test, failing to follow the guidance of the Court of Appeal in **MA (Somalia) [2018] EWCA Civ 994**.
10. In **MA**, the Court of Appeal interpreted the findings of the Court of Justice of the European Union in the joint cases of **Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi & Dier Jamal v Bundesrepublik Deutschland** C-175/08, C-176/08, C-178/08, C0179/08 which we refer to as “**Abdulla**”.
11. In paragraph 2 of **MA** the Court of Appeal set out its conclusion, in light of **Abdulla**, that:

“A cessation decision is the mirror image of a decision determining refugee status. By that I mean that the grounds of cessation do not go beyond verifying whether the grounds of recognition of refugee status continues to exist, the relevant question is whether there has been a

significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which she would be held to be a refugee. The recognising state does not in addition have to be satisfied that the country of origin has a system of Government or an effective legal system for protecting basic human rights, though the absence of such systems may have caused the lead to the conclusion that a significant and non-temporary change in circumstances has not occurred.


12. That was the test that had to be applied by the First-tier Tribunal here. Nothing in the decision shows that the correct test set out in **Abdulla** and approved in **MA**, was applied in form or substance. On the contrary, in paragraph 32 the judge says, “I must assess whether the revocation of the appellant’s status is conducive to the public good”. That was clearly the wrong legal test for assessing whether Ms [C]’s refugee status should be revoked. The judge sets out the same incorrect approach in paragraph 36 of the decision:

“I do not regard this appellant as a danger to the security or the interests of the UK by the commission of these two offences and therefore I do not accept upon the basis of these convictions it is conducive to the public interest to revoke of her refugee status”.

13. In our view, this was a clear and material misdirection of law on a material matter, whether the appellant’s refugee status could be revoked and, in turn, whether she could be deported. That error of law is such that the decision must be set aside to be re-made afresh. All issues are at large, including fact finding, and this is therefore a case where remittal to the First-tier Tribunal is the appropriate disposal.

Decision

14. The decision of First-tier Tribunal discloses a material error on a point of law and is set aside to be re-made.
15. The appeal will be re-made in the First-tier Tribunal.

Signed: 
2018
Upper Tribunal Judge Pitt

Date: 11 December