Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00095/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 November 2019	**On 6 December 2019**

Before

UPPER TRIBUNAL JUDGE CANAVAN
UPPER TRIBUNAL JUDGE KEITH

Between

EN
(ANONYMITY DIRECTION MADE)

Appellant/Respondent

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Appellant

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 his family. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For EN:	Mr P Haywood, instructed through direct access
For the Secretary of State:	Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This case involves appeals to the Upper Tribunal by both parties. As such, it is convenient to refer to them as 'EN' and the 'Secretary of State'.

2. EN appealed against the decision of the Secretary of State dated 28 June 2017 to revoke his refugee status, on the basis of cessation; and to refuse his human rights claim, in the context of the Secretary of State having issued a notice of intention to issue a deportation order. First-tier Tribunal Judge Buckwell ("the FtT") promulgated a decision on 14 August 2019 in which he dismissed the EN's appeal insofar as it related to EN's refugee status, concluding that EN fell within the scope of section 72 of the Nationality, Immigration and Asylum Act 2002 as a result of a previous sentence of three years' imprisonment for possession with intent to supply class-A drugs. The FtT did not go on to consider further the issue of cessation of EN's Refugee Convention status.

3. In respect of EN's appeal on human rights grounds, the FtT allowed the appeal both in respect of his private life by reference to paragraph 399A of the Immigration Rules and section 117C(4) of the 2002 Act; and in respect of his family life, by reference to paragraphs 399(a) and (b) of the Immigration Rules and section 117C(5) of the 2002 Act, by virtue of his relationship with a British partner, with whom he now had a son.

4. The Secretary of State appealed the FtT's decision, but only in respect of the human rights claim relating to EN's family life; and did not appeal the FtT's decision about EN's private life. At the hearing before us, Mr Clarke expressly conceded that in the light of the lack of any appeal against the FtT's decision about the applicant's private life, the FtT's decision on the human rights appeal relating to EN's family life did not disclose any material error of law, and he conceded that the Secretary of State's appeal should therefore be dismissed.

Decision on Secretary of State's appeal

5. Considering the concessions made on behalf of the Secretary of State, we dismiss the Secretary of State's appeal against the FtT's decision.

EN's appeal

6. Whilst Mr Clarke did not make any similar concession in relation to the FtT's decision in relation to certification under section 72 of the 2002 Act, he accepted that the FtT had not explained, at [179] of the decision, why the FtT concluded that EN had not rebutted the presumption that EN constituted a danger to the community of the UK, in circumstances where EN had provided evidence on that very point, i.e. in relation to his rehabilitation. The FtT had simply referred to the fact of EN receiving a three-year prison sentence. The FtT had also made no findings in relation to cessation of EN's Refugee Convention status: see Essa (Revocation of protection status appeals) [2018] UKUT 244. In the circumstances, and despite a lengthy recitation of evidence in his decision, we conclude that the FtT had failed to make

sufficient findings, or provide sufficient reasons, in relation to EN's rebuttal of the presumption under section 72. The FtT had also failed to make any findings or state any conclusions in relation to EN's refugee status, noting that even if he had not rebutted the presumption under section 72, EN was entitled to know whether his Refugee Convention status had ceased.

Decision on appellant's appeal – error of law

7. For the reasons set out above, we find that the FtT erred in his decision in concluding that EN had not rebutted the presumption under section 72 of the 2002 Act. The FtT made no decision on the issue of cessation of refugee status, so that it remains incomplete. The FtT's decision on EN's protection claim is therefore unsafe and cannot stand.

8. We therefore set aside the FtT's decision on EN's appeal against the section 72 decision and the cessation of protection status decision.

Remaking

9. We agreed with the parties' representatives that it was appropriate for us to remake EN's appeals on the two issues, rather than to remit them to the First-tier Tribunal to remake. It was unnecessary for us to hear any live evidence and instead we were able to consider the detailed submissions and the extensive evidence in EN's bundle which had previously been considered by the FtT, as well as an OASys Report.

The section 72 issue

10. The burden is on EN to rebut the presumption that he constitutes a danger to the community of the UK. Section 72 of the 2002 Act reflects the UK's implementation article 33(2) of the Refugee Convention. In that context, the overall burden is for the Secretary of State to demonstrate that refoulement is permissible, albeit the rebuttable presumption has been implemented in section 72.

11. There is no dispute that EN had been convicted of a particularly serious crime, which in EN's case was for the possession of, with intent to supply, 'class-A' drugs, namely heroin and crack cocaine, for which he was given three years' concurrent sentences of imprisonment on 26 November 2015. At the date of that conviction, that was the latest in a history of EN's offending, which included: robbery; burglary; theft; and possession of a knife in 2012; further convictions for possession of a knife; resisting or obstructing a constable; and possession of cannabis in 2013; and in 2014, failing to comply with a detention and training order. Following EN's subsequent release from prison in September 2016, he was most recently convicted of possession of cocaine and cannabis on 15 February 2019 for which he was fined, rather than given a further prison sentence. It was said by EN's representatives that the 2019 offence amounted to a "blip" in his rehabilitation.

12. The FtT had, in his decision, recorded much of the evidence in respect of the issue of whether EN constitutes a danger to the community of the UK. In particular, he noted

the evidence of Victoria Ing, a social worker with Southwark LBC Youth Offending Service; Mavis Daley, former foster mother of EN; and Charles Lee, a key worker for Cornerstone Care Partnerships Limited, contracted by Southwark LBC Social Services, who had worked with EN since his release from Feltham Young Offenders Institute in September 2016. We should add that there is substantially greater evidence than what we have referred to, but we have nevertheless considered all the evidence before us. The honesty and professionalism of the witnesses who gave evidence in support of EN, to whom we have already referred, was unchallenged in the FtT hearing and there was no challenge to their evidence before us.

13. Ms Daley, EN's former foster mother, described EN's early upbringing in the UK, following his departure from Cameroon, as highly traumatic. Whilst she had not recognised him as suffering from any mental health issues, she referred to his brother having been murdered in September 2012, which had traumatised him, as well as the physical cruelty to which he has been subjected by his father. She, along with the other witnesses and his current partner, described the positive role that EN played in looking after his young son and the fact that the birth of his son had brought stability into EN's life following his period of imprisonment. Whilst EN was a non-resident father, he saw his son on a regular basis and Ms Daley was in regular contact with EN and regarded him as a member of her family and continued to provide him with support.

14. Ms Ing, a qualified social worker, who had ceased supervising EN professionally in August 2014, nevertheless had continued to provide him with support on a voluntary basis ever since, describing him as having maturing interests including an awareness of politics and describing EN as having a good relationship with his partner, and the partner's sister; and that their son has a positive home life. Ms Ing found him to be physically and mentally in a better position than she had previously observed, notwithstanding his recent arrest in February 2019 for the possession of cocaine and cannabis. She believed that whilst there might be some risk of low level re-offending, she was frequently required to make professional risk assessments on individuals and believed that following the recent birth of his son, there had been a "radical shift" in EN, with a change of demeanour. EN was calmer and happier, and she had been "*genuinely shocked*" as everything about EN was now positive.

15. Charles Lee had worked with EN since his release from Feltham in September 2016. He saw him on a weekly basis for about six hours each week, helping EN to manage his own life. Mr Lee described the birth of EN's son and EN's ongoing relationship with the child's mother as positive factors and that both relationships had calmed EN. Mr Lee was recorded by the FtT as stating:

> "*Having become a father has totally changed [EN]. I would say that if he was 5% positive before, he is now 75% positive. His attitude to life has changed. He is very intent on keeping his son safe and bringing him up well*."

16. Mr Lee described the initial difficulties with which EN had had to cope on his release from prison in 2016, with no bank account or access to benefits and EN had nevertheless been able to establish a basic stability, despite the 'limbo' in which he

had been placed. Mr Lee described being '*amazed*' at the change of attitude in EN, who had a motivation and a purpose in life.

17. In addition to the evidence of those who had worked with EN over a significant period of time following his release, we also considered the OASys assessment which was carried out on 18 August 2016 and which described EN as presenting a 'medium' risk to the community. The report defined that term as indicating that an offender had a potential to cause serious harm but was unlikely to do so unless there was a change of circumstances, for example a failure to take medication, loss of accommodation, relationship breakdown, or drug or alcohol misuse. The report identified EN's previous willingness to a change and improvement in his attitude, albeit his good intentions could be short-lived, as indicated by the index offence. We were also conscious that other than the offence of which EN was arrested in February 2019, which was for possession rather than supply of drugs, the risks of reoffending within two years, i.e. by August 2018, were ones which EN in fact had positively exceeded. The report had assessed EN as having a 53% chance of reoffending within the two-year period, during which he did not in fact re-offend.

18. Taking into account all of the evidence, including the evidence of professional social workers who had worked with EN for long periods of time and could be expected to provide objective views; and whose expertise and honesty was not questioned, we conclude that EN has rebutted the presumption that he continues to constitute a danger to the community of the UK. On the one hand, the seriousness of his 2015 offence should not be understated; it is in the context of a significant offending history; and was identified in the OASys report of 2016 as a potential risk factor in subsequent reoffending. On the other hand, we considered the fact that EN was not subsequently reconvicted of an offence until February 2019; and when he did reoffend, this was of a different, lesser magnitude of seriousness, as reflected in the non-custodial sentence, of fines for possession of cocaine of £125 and £83 for possession of cannabis. Coupled with the powerful evidence of Ms Ing and Mr Lee as to the real changes that they have witnessed in EN, we conclude that EN has discharged the presumption that he constitutes a risk. Had his reoffending been for a different offence, such as for violence, possession of a knife; or possession with intent to supply, that would have been a different matter.

Decision – section 72

19. In the context of the presumption in section 72 having been rebutted, we remake the decision that his appeal succeeds on the section 72 issue, with the consequence that we are not obliged to dismiss his appeal by reference to section 72(10) of the 2002 Act.

The cessation issue

20. We went on to consider whether, for the purposes of section 33 of the UK Borders Act 2007, EN's removal pursuant to a deportation order would breach his Convention rights and in particular whether his status can be revoked on cessation grounds. In making this assessment, we were conscious that EN had been granted

indefinite leave to remain, following his unlawful entry to the UK in 2002, and the grant of refugee status was to his father, with his grant of leave being made as the minor dependent child of his father, from whom he was estranged. For EN's appeal to succeed, he must prove, to the lower standard, an individual or personal well-founded fear of persecution, not one derived from or dependent upon another person: see SSHD v JS (Uganda) [2019] EWCA Civ 1670. We needed to consider EN's circumstances in a broad and general sense, covering both his relationship with his father and the circumstances in connection with which his father had been granted refugee status and the risks to him arising from his political affiliations; as well as the linked personal risks to EN and the extent to which that led EN personally to have a well-founded fear of persecution.

21. EN's father had been granted refugee status as a prominent anti-government activist, who opposed the regime of President Biya in Cameroon in the 1990s. The father's claim had previously been the subject of Tribunal determinations, including by Adjudicator McKee, as he then was, in a decision promulgated on 12 August 2002. In the 2002 decision, Adjudicator McKee accepted that EN's father had been an activist with the Social Democratic Front, or 'SDF', in opposition to the Cameroon government and his '*sur place*' activities were of sufficient prominence to result in him being elected as Vice Chairman of the SDF London branch on fleeing to the United Kingdom. His prominence had attracted newspaper coverage in the 'Independent on Sunday' newspaper on 5 August 2001, which had come to the attention of the Cameroonian High Commission. Adjudicator McKee did not regard his *sur place activities* as contrived. Whilst a previous asylum claim had been unsuccessful, Adjudicator McKee assessed EN as a wholly credible witness. In granting the asylum claim, Adjudicator McKee noted the significant risks to opponents of the Biya regime of serious ill-treatment, where prison conditions were appalling.

22. It was in this context that we also considered the expert report of Dr Charlotte Walker-Said, produced on 4 May 2018, in relation to the risks to EN, were he to be returned to Cameroon. Her expertise was unchallenged by the Secretary of State. In providing her report she had considered the Secretary of State's representations as well as the UNHCR letter opposing a possible revocation of EN's refugee status. She testified as to the risk that EN would face on the basis of his father's prominence in opposition politics with resulting risks to family members, despite the period of time since EN's father's departure from Cameroon, said to be in February 1997; and EN's departure from Cameroon with his step-mother, and his entry to the UK in June 2002; and despite the fact that EN is estranged from his father, bearing in mind the Biya government's perception of even relatives of opposition activists as '*enemies of the state*'. The SDF continued to be prominent in anti-government opposition to the Biya government and the level of conflict between the authorities and opposition groups remained high, particularly in the context of the government's suppression of Anglophone groups, which provide significant support to the SDF, Dr Walker-Said assessed the risks to EN as being particularly significant by reference to the following factors: the significant repression by the Cameroonian authorities of SDF dissent; EN's perceived familial links to his father; and as someone returning to Cameroon

without a family or social network support, leading to the risk of destitution and homelessness, which in turn would exacerbate the risk of identification by the Cameroonian authorities and subsequent ill-treatment. EN's father's long-time membership of the SDF; his father's continuing statements online criticising the Biya regime; EN's likely social isolation in Cameroon and his Anglophone identity would mean that it was likely that he would be seen as a subversive, even setting aside the issue of EN's mental health vulnerabilities. Dr Walker-Said concluded that EN would be very likely to be placed in a "*highly dangerous situation*", were he returned to Cameroon. He would "*likely be a victim of police and security force abuse*."

23. We noted that there was nothing in the wider objective evidence to dispel the fears identified by Dr Walker-Said, with recent reports in June and October 2018 (Amnesty International and the FCO) referring to a clampdown on any form of dissent and deteriorating situation in Anglophone regions as well as a Human Rights Watch Report of 6 May 2019 which referred to endemic torture and state actors using torture and other ill-treatment of suspects to confess to crimes or humiliate and punish them.

24. In the circumstances, we have no hesitation that EN has demonstrated a well-founded fear of persecution based on imputed political opposition to the current government of Cameroon, arising from his perceived links to his father, a prominent SDF activist; as well as his own personal circumstances, as an Anglophone speaker, with no support network in Cameroon. The circumstances in connection with which his father was recognised as a refugee have not ceased to exist; and while that fear of persecution was recognised, in 2002, in respect of his father alone, EN nevertheless has also demonstrated a well-founded fear of persecution in his own right.

Decision – cessation

25. We therefore remake the First-tier Tribunal's decision on the cessation issue by allowing EN's appeal. Revocation of his protection status would result in the UK breaching its obligations under the Refugee Convention.

Signed J Keith Date 4 December 2019

Upper Tribunal Judge Keith

TO THE SECRETARY OF STATE
FEE AWARD

While EN's appeal has succeeded, no appeal fee was paid and therefore there can be no fee award.

Signed J Keith Date 4 December 2019

Upper Tribunal Judge Keith