**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/02251/2018 (P)

**THE IMMIGRATION ACTS**

**Decision under Rule 34 Without a hearing**
**On 11th September 2020**

**Decision & Reasons Promulgated**
**On 16th September 2020**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**ASB**
**(anonymity order made)**

Respondent

**DETERMINATION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the respondent in this determination identified as ASB. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings**

1. FtT Judge S Y Loke dismissed ASB's appeal against the refusal of his international protection and human rights claim for reasons set out in a decision promulgated on 19th March 2020. Permission to appeal was granted by FtT judge Mark Davies on 7th April 2020. Directions for the further conduct of the

appeal were sent on 3rd July 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.

2. The respondent complied with directions and stated he did not request an oral hearing. The SSHD neither made submissions nor identified whether she objected to a decision being taken on the papers and nor did she request an extension of time to make submissions. Although the grounds seeking permission to appeal requested an oral hearing there was no indication in the papers before me that the appellant maintained that position or the reasons for that position.

3. I am satisfied that the submissions made on behalf of the respondent together with the papers before me[1] are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

4. The SSHD sought and was granted permission to appeal on the ground that it was arguable (a) that the FtT judge erred in law in finding that s72 did not apply; and (b) that the FtT judge erred in finding that there were insurmountable obstacles to ASB integrating into the DRC and that because one of the two exceptions was not made out, the judge erred in therefore the decision that there were very compelling circumstances over and above those exceptions was flawed.

Ground 1

5. This ground is misconceived. The appellant did not pursue an appeal on the grounds that he was a refugee but on Article 3 and 8 only. The FtT judge referred to s72 not being of relevance but proceeded to consider whether ASB had rebutted the presumption. The judge set out the correct jurisprudential framework and the evidence she considered. The SSHD refers to the crimes being particularly serious and submits the judge failed to take into account that the appellant had failed to demonstrate remorse.

6. The judge unhesitatingly found that ASB had committed particularly serious crimes. In reaching her conclusion that he no longer presents a danger to society and rebutted the presumption, she refers to all the matters she took into account including his role as a mentor and positive role model to young people to avoid descending into crime. It is difficult to understand on what basis the mere lack of a statement of remorse is such as to undermine the judge's findings. The Ben Kinsella Trust with whom ASB works closely and from whom he had an excellent reference has as its purpose the education of young people about the consequences of choices, so they stay safe and away from crime. The issue of lack of remorse was not put to ASB by the SSHD although ASB's actions in any event speak louder than words of remorse could.

[1] (a)the appellant's bundle; (b) the four bundles filed on behalf of the respondent; (c) the decision of FtT judge Loke; (d) The application for permission to appeal; and (e) the grant of permission to appeal.

7. The judge has not erred in law in finding that the s72 certificate is of no relevance given that ASB was not pursuing a refugee claim but in any event her findings that ASB has rebutted the presumption were findings that were open to her on the evidence, were adequately reasoned and sustainable. The SSHD is simply disagreeing with the conclusion reached.

Ground 2

8. The SSHD submits the judge diluted the elevated threshold required to be met; that "mere hardship, mere hurdles and mere upheaval or inconvenience even where multiplied, will generally be insufficient". She submits the matters considered by the judge whether in isolation or cumulatively did not meet the required elevated threshold, that the judge failed to identify "any obstacles that would reach the definition of very significant, [ASB] would face the same challenges that the majority of deportees would face and therefore these should not be classed as very significant obstacles." The SSHD submits that the judge failed to consider the connection ASB has to the DRC through his parents or that his family could assist with reintegration and failed to take account of the £1500 resettlement funds he would receive; erred in law in factoring in that he had not committed further offences. The SSHD submits that because ASB did not meet one of the Exceptions, the finding that there were very compelling circumstances above and beyond was legally flawed.

9. The judge did consider the £1500 fund that the respondent states would be provided, although because ASB has exercised his right of statutory appeal it is unclear that he would in fact receive this.

10. The SSHD is incorrect in the submission that one or both of the Exceptions have to be met before consideration of whether there are very compelling circumstances can be considered. Although that may be the case generally it is not a necessity – see *Akinyemi* [2017] EWCA Civ 236.

11. The judge fully appreciated the seriousness of ASB's criminality and gave significant weight to the public interest. She utilised a 'balance sheet' approach and lawfully considered the whole of ASB's circumstances, in the round, in the context of that serious criminality and the weight placed upon that. Her findings were rational and adequately reasoned.

12. The judge has not erred in law.

Conclusion

13. The decision read as a whole is not infected by error of law such that it is to be set aside to be remade. That the SSHD considers a different conclusion should have been reached does not render the judge's decision infected by errors of law. She gave rational and sustainable reasons for finding that ASB's deportation would be disproportionate.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT judge allowing the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

*Jane Coker*
Upper Tribunal Judge Coker
Date 11 September 2020