



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

Appeal Number: RP/00048/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2020**

**Decision & Reasons Promulgated
On 21 January 2020**

Before

**THE HONOURABLE MRS JUSTICE MOULDER
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE KEBEDE**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR I Q
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Miss A Radford of Counsel instructed by Turpin & Miller
LLP

DECISION AND REASONS

1. The Secretary of State appeals the determination of the First-tier Tribunal promulgated on 3 October 2019. Permission was granted on 4 November 2019.
2. Mr Lindsay appears for the Secretary of State and Miss Radford for the respondent.

Background

3. The background to this matter in brief is that the respondent is a citizen of Afghanistan born on 1 January 1995. He claims to have entered the UK on a lorry on 12 November 2007. On the same day he applied for asylum. This was refused but he was granted discretionary leave until 30 March 2011. On 26 June 2008, following a successful appeal, he was granted asylum and leave to remain until 25 June 2013. On 21 August 2013 he was granted indefinite leave to remain. On 13 January 2014 at Oxford Crown Court the respondent pleaded guilty to an offence of sexual activity with a male child under the age of 16. He was sentenced to 27 months' detention in a Young Offenders' Institution and placed on the Sex Offenders' Register for ten years. He was also made the subject of a Sexual Offences Prevention Order for five years. On 4 July 2014 the Secretary of State served on the respondent notice of liability to deportation. He was informed that Section 72 of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act") applied and invited to rebut the presumption that his presence was a danger to the community. His representatives replied that he would be at risk on return to Afghanistan because of his sexuality. On 7 May 2019 the Secretary of State decided to revoke his refugee status. On 14 May 2019 the respondent appealed.
4. Following the hearing in September 2019 First-tier Tribunal Judge Broe allowed the respondent's appeal. The judge found that the appellant had rebutted the presumption that he constituted a danger to the community of the UK; that he was at risk on return to his home area of Jalalabad and that internal relocation to Kabul would be unreasonable, unduly harsh and a breach of his Article 8 rights.

Grounds

5. The grounds of appeal which are advanced by the Secretary of State are:
 - (i) that the judge failed to take into account or resolve a conflict on a material matter in finding that the presumption that the respondent constituted a danger to the community had been rebutted.
 - (ii) that the judge failed to give adequate reasons for the conclusion that it would be unduly harsh to relocate.

Legal Framework

6. The legal framework is Section 72 of the 2002 Act. Sub-section (2) provides:

"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.”

Sub-section (6) states: “A presumption under sub-section (2) ... that a person constitutes a danger to the community is rebuttable by that person.”

Submissions

7. It was submitted for the Secretary of State that at paragraph 26 of the judgment the judge made reference to the sentencing remarks and to the submission made that the appellant had passed on the victim’s contact details, a fact that he continued to deny. It was submitted for the Secretary of State that the First-tier Tribunal Judge had not dealt with this issue in his judgment and that the failure to deal with this specific matter meant that the outcome of the decision might have been different, that it could have affected his conclusion as to the risk which the respondent poses.
8. In relation to ground 2 it was submitted for the Secretary of State that despite the heading of the ground this was in effect an assertion that the judge had materially misdirected himself in law in that he had failed to apply the relevant country guidance. It was submitted that the judge had failed to consider the particular circumstances of the respondent which it was submitted is clearly required and this court was referred to the head note in **AS (Safety of Kabul) Afghanistan [2018] UKUT 00118**. It was submitted for the Secretary of State that there had been no consideration by the Tribunal Judge of anything other than the health of the respondent; the judge had made no express findings as to whether or not members of the respondent’s family other than those involved in the dispute might be able to travel to Kabul and provide assistance to him. It was also submitted that although the judge had had regard to the psychiatrist report of Dr Davies there was no finding in the judgment that the conclusions of that report had been accepted. It was submitted that merely because the respondent was in dispute with some members of his family did not mean that others could not provide support.
9. For the respondent it was submitted that the First-tier Tribunal Judge had clearly had regard to the sentencing remarks as is evident from the references to them in the judgment. It was submitted that the First-tier Tribunal had had regard to the professional evidence of Dr Davies that the risk of reoffending had declined. In relation to the second ground it was submitted that the Country Guidance sets out the position that in general it will not be unreasonable or unduly harsh for a single adult male in good health to relocate, but it was submitted that the head note makes clear that it is the particular circumstances which must be taken into account and in this case the mental health of the respondent is clearly referred to in the judgment as is the nature of his family links. It was submitted that if the respondent is not in good health then it is clear that the general rule does not apply.

Discussion

Ground 1:

10. In relation to ground 1, failing to take into account or resolve a conflict on a material matter, it is clear that the judge had read and considered the sentencing remarks. The judge referred to them in his judgment at both paragraphs 35 and 41 of the judgment in particular. The Tribunal Judge noted that in the sentencing remarks the sentencing judge had found that the appellant had no real insight into his conduct and he found that the appellant posed a high risk of serious emotional harm to children and in particular young males, “and until you find out and understand what effect your conduct had, whether or not as he did in this instance, he agreed, that risk will remain”.
11. The First-tier Tribunal Judge then went on to consider the more recent evidence before him, in particular, at paragraph 37 of the judgment the First-tier Tribunal Judge considered the two OASys Reports, one dated 3 November 2014 and the second dated 16 October 2015. The Tribunal Judge noted the conclusions of those two reports. In the second report the Tribunal Judge states it was noted that the appellant had been diagnosed with chronic schizophrenia in March 2015. He had been identified as presenting a risk to children; he was found to present a medium risk of harm to children in the community.
12. The judge then went on at paragraph 38 to consider the evidence from the probation officer and then at paragraph 39 the Tribunal Judge referred to the report from Dr Davies, a consultant forensic psychologist who had interviewed the respondent on 4 September 2019. The Tribunal Judge noted at paragraph 39 of his judgment that:-

“In her opinion the appellant ‘currently presents a low risk of sexually violent offending. He presents a moderate risk of serious harm if he were to reoffend, although current likelihood of him committing further offences of serious or sexual harm is considered to be low’. She said that he had significant mental health needs requiring medication and long term support to assist in his recovery.” [emphasis added]
13. This Tribunal notes that in the report of Dr Davies she made an express reference to the fact that in the course of his offending the respondent passed on the details of the victim to another male (paragraph 3.0.23 of her report) and her overall conclusion at paragraph 9 of her report, specifically paragraph 9.0.5, therefore takes into account this particular finding.
14. The conclusion of the Tribunal Judge is set out in paragraphs 42 and 43, in particular. At paragraph 42 the Tribunal Judge notes the “progressive reduction in the risk posed by the appellant” and notes that the findings in the expert’s report were not challenged. This Tribunal does not accept the submission for the Secretary of State that the reference to the “expert’s report” could be anything other than a reference in the context to the

report of Dr Davies. It is in our view clear that the Tribunal Judge accepted the findings of Dr Davies and took into account both her report and the OASys Reports as well as the sentencing remarks in reaching his conclusion on this issue at paragraph 43 of his judgment. At paragraph 43 the Tribunal Judge stated:-

“On what is before me I am satisfied that the appellant cannot now be said to be a danger to the community. I therefore conclude that he has rebutted the presumption against him.”

15. There is no error shown in our view that the first instance judge failed to take into account or resolve a conflict on a material matter. In our view this is no more than a disagreement with the factual conclusion which the First-tier Tribunal Judge reached and it is a conclusion which was open to him on the evidence.

Ground 2

16. In relation to ground 2 the judge considered the appellant’s health. At paragraph 49 the Tribunal Judge stated:-

“I have given careful consideration to the appellant’s health. The appellant provided letters from his GP and a consultant psychiatrist. This evidence is not challenged.”

He continues, “The consultant diagnosed chronic schizophrenia, depression and learning disability. He was sectioned for his own safety in December 2018”.

17. At paragraph 50 the First-tier Tribunal Judge states that he has been guided by the findings in **AS (Safety of Kabul) Afghanistan** and he quotes the relevant test referred to above:-

“it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person’s age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above”.

18. Having correctly set out the test the First-tier Tribunal Judge then concluded at [51]:

“I have had regard to the appellant’s health and find that it would be unreasonable and unduly harsh to expect him to relocate to Kabul”.

19. In our view the judge correctly considered the position having regard to the guidance in the case law. He considered not only the respondent’s mental health, but also (earlier in the judgment as set out below) factors

such as his family and his isolation. At paragraph 45 of the judgment, having referred to the findings of the Tribunal in May 2008, the First-tier Tribunal said that he saw no reason to depart from the previous findings: these previous findings (quoted at [44] of the judgment) were that there was no effective protection for the appellant against his cousins or against exploitation and risk in general. The First-tier Tribunal Judge accepted, of course, that the respondent is now an adult, however he concluded that in the absence of any evidence to the contrary, he was still involved in a family dispute which places his life at risk in his home area of Jalalabad and the judge stated that it follows that he cannot return there and that he will not have family support on return.

20. In addition, the judge had before him details of the respondent's family. At paragraph 10 of the judgment the judge recorded that the respondent had left Afghanistan after his father was killed. It also stated that he lost contact with his uncle and at paragraph 23 the judge noted that his mother and two sisters were in Afghanistan when he left but he had not been in contact with anyone there since he came to this country. His mother was not educated and did not know how to use Facebook or a telephone.
21. We do not accept therefore the submission that the First-tier Tribunal Judge needed to make any express findings in relation to the ability of family members to provide assistance if the respondent was to relocate. It had not previously been asserted by the Secretary of State that the respondent would in fact have family support if he were to relocate.
22. It is clear law that it is not necessary for the judge to rehearse every detail or issue. There was no conflict in relation to family support that needed to be resolved. The judge considered all the evidence; correctly applied the Country Guidance in the circumstances of this respondent and accordingly we find that there was no material misdirection of law and there was no failure to give adequate reasoning. The Secretary of State would have been in no doubt why the decision in this case was reached. The conclusion that relocation to Kabul was unreasonable and unduly harsh was open to the judge.

Conclusion

23. For all these reasons therefore the appeal is dismissed.

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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 17 January 2020

Mrs Justice Moulder
Sitting as a Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

This is a fee exempt appeal.

Signed

Date

Mrs Justice Moulder
Sitting as a Judge of the Upper Tribunal