



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

Appeal Number: PA/00049/2019

THE IMMIGRATION ACTS

Heard at Field House

On 1 November 2021

**Decision & Reasons
Promulgated**

On 22 November 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR H G P
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Miss A Atcha, Z. Akhtar Solicitors

DECISION AND REASONS

This is an appeal by the Secretary of State against a decision of Judge of the First-tier Tribunal Bartlett (“the judge”) promulgated the 11 March 2021. For convenience, I will refer to the parties as they were designated in the First-tier Tribunal.

The appellant is a citizen of Jamaica born on 11 January 1965. He has lived in the UK since 1996. He has committed several crimes for which he has received long prison sentences. In 1997 he was sentenced to 6 years; in 2004 he was sentenced to 4 years; and in 2017 he was sentenced to 5 years. The appellant claims that he faces a real risk if returned to Jamaica because of his involvement with gangs.

The judge accepted that the appellant faces a real risk from gangs. The judge also found that although the appellant has committed serious offences he has been rehabilitated and does not pose a danger to the community.

On the basis of the appellant having been rehabilitated, the judge found that the appellant (a) has rebutted the presumption under section 72 of the Nationality Immigration and Asylum Act 2002 ("section 72"); and (b) is not excluded from humanitarian protection under paragraph 339D of the Immigration Rules ("paragraph 339D").

The judge allowed the appeal on humanitarian protection grounds and human rights grounds (under articles 2, 3 and 8 ECHR). However, the judge dismissed the appellant's asylum claim on the basis that there was not a "Refugee Convention reason".

The respondent's grounds of appeal argue that the judge misapplied section 72 and paragraph 339D.

The respondent's argument in respect of section 72 is immaterial because section 72 is only relevant to an asylum claim and the judge found, for reasons unrelated to section 72, that the appellant was not entitled to asylum. There is therefore no need to – and I do not – consider this argument.

The respondent's argument in respect of paragraph 339D is plainly correct. The judge accepted that the appellant committed a serious crime, and a person who has committed a serious crime is excluded from humanitarian protection under paragraph 339D(iv). Therefore, the judge erred by allowing the appeal on humanitarian protection grounds as the exclusion from humanitarian protection in paragraph 339D was applicable.

The respondent's grounds of appeal do not challenge the decision allowing the appeal on human rights grounds (as the exclusions from protection under section 72 and paragraph 339D are not applicable to articles 2 and 3 ECHR). Therefore, as Mr Tufan acknowledged, the decision in respect of human rights is unaffected by this appeal and stands.

Notice of decision

I set aside the decision of the First-tier Tribunal allowing the appeal on humanitarian grounds but leave undisturbed the decision of the First-tier Tribunal allowing the appeal on human rights grounds.

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

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 12 November 2021