



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001278
First-tier Tribunal No:
RP/00047/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 November 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

PM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms R Arif, Senior Home Office Presenting Officer

For the Respondent: PM, in person, unrepresented

Heard at Birmingham Civil Justice Centre on 2 November 2023

DECISION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, PM and/or any member of his family is granted anonymity. The underlying claim arises from a grant of international protection and it is appropriate to make an anonymity direction to protect the identity of members of PM's immediate family who have been granted international protection.

No-one shall publish or reveal any information, including the name or address of PM, likely to lead members of the public to identify PM and/or any member of his family. Failure to comply with this order could amount to a contempt of court.

1. The appellant in the appeal before me is the Secretary of State for the Home Department (“SSH”) and the respondent to this appeal is PM. However, for ease of reference, in the course of this decision I adopt the parties’ status as it was before the First-tier Tribunal (“FtT”). I refer to PM as the appellant, and the Secretary of State as the respondent.
2. The appellant is a national of Zimbabwe. He arrived in the UK on 3 August 2005, aged 8, with his sister to join their father in the UK. The appellant had been granted a visit visa valid until 28 January 2006. In April 2006 the appellant’s father applied for asylum. The appellant and his sister were named as dependents. Although that claim was refused by the respondent, following a successful appeal the appellant was granted leave to remain until 17 July 2012. He was subsequently granted indefinite leave to remain on 12 January 2013.
3. On 16 February 2017 the appellant was convicted of two counts of sexual assault on a female, and on 9 June 2017 he was convicted of trespass with intent to commit a relevant sexual offence. He was sentenced at Ipswich Crown Court on 30 June 2017. The appellant received a sentence of 12 months detention in a Young Offenders Institution (“YOI”) for each count of sexual assault on a female to be served concurrently. He was also sentenced to a period of 27 months detention in a YOI for the offence of trespass with intent to commit relevant sexual offences. That sentence too was to be served concurrently. The appellant was therefore sentenced to a total of 27 months detention and placed on the sex offenders register for 10 years.
4. On 20 July 2018, the appellant was informed of the effects of his actions on his refugee status. He was also informed of the respondent’s intention to revoke his refugee status and was provided with an opportunity to submit representations. The UNHCR was also invited to provide comments. Having considered the representations made by and on behalf of the appellant, together with the comments made by the UNHCR, on 23rd July 2020, the appellant was notified of the respondent’s decision to revoke the appellant’s refugee status. For reasons set out in the respondent’s decision of that date, the respondent concluded that the appellant has failed to rebut the presumption that he has been convicted of a particularly serious crime or that his continued presence in the UK constitutes a danger to the community. In accordance with Section 72(9)(b) of the Nationality Immigration and Asylum Act 2002, (as amended) (“the 2002 Act”) the respondent certified that the presumption under Section 72(2) applies to the appellant. The respondent also concluded that the appellant is excluded from a grant of humanitarian protection.
5. The respondent’s decision was silent as to the appellant human right’s claims. All that was said by the respondent was that:

“15. It is considered from the above that although your refugee status has been revoked, consideration of your particular circumstances identifies that at this point in time there is a potential breach of your rights under Article 3 of the ECHR. In light of this your removal will not be enforced at this time,

however, your circumstances, and the country situation will remain under review.

...

29. ... it has been explained that you will not be removed to Zimbabwe at the current time because it is recognised that this would result in an Article 3 breach in your case.

...

35. Although your refugee status has been revoked, consideration of your particular circumstances identifies that at this point in time there is a potential breach of your rights under Article 3 of the ECHR. In light of this your removal will not be enforced at this time, however your circumstances, and the situation in Zimbabwe, will remain under review."

6. The appellant's appeal was heard by First-tier Tribunal Judge Chohan on 13 February 2023. The appellant attended the hearing and was not represented. The respondent was represented by Mr J Smith. For reasons set out in his decision promulgated on 27 February 2023, Judge Chohan dismissed the appeal against the respondent's decision to revoke refugee status, and on Article 8 (family life) grounds, but allowed the appeal on Article 3 and Article 8 (private life) grounds.
7. The respondent claims Judge Chohan had no jurisdiction to consider whether the removal of PM from the UK would be unlawful under Section 6 of the Human Rights Act 1998 and in breach of the ECHR. The appeal to the First-tier Tribunal under s81(1)(c) of the 2002 Act was against the respondent's decision to revoke the appellant's protection status. The respondent had not made any decision to refuse a human rights claim made by the appellant. The respondent's decision letter dated 23 July 2020 had addressed the Refugee Convention and humanitarian protection only, and the First-tier Tribunal therefore had no jurisdiction to consider whether PM's removal breached his rights under Articles 3 and 8 of the ECHR. The respondent claims Judge Chohan erred in allowing the appeal under Articles 3 and 8. The respondent claims the appellant had been informed that his removal from the UK to Zimbabwe would not be enforced at the present time due to a potential breach of Article 3. That was not a decision to refuse a human rights claim made by the appellant. Finally, the respondent claims that in considering the appellant's Article 8 (private life) claim, Judge Chohan solely had regard to the interests of the appellant with a focus upon the length of his presence in the UK, but failed to adequately address relevant public interest considerations.
8. Permission to appeal was granted by First-tier Tribunal Judge Aldridge on 5 April 2023.

The appeal before me

9. As the appellant was unrepresented before me, I explained to him that in the appeal before me, I will be considering whether the decision of Judge Chohan is infected by a material error of law. If so, I will consider how the appeal should be disposed of. I summarised to the appellant the reasons why the respondent claims there is an error of law in the decision of the First-tier Tribunal. I explained to the appellant that Judge Chohan has

made a finding that the appellant has failed to rebut the presumption in section 72 of the 2002 Act that he constitutes a danger to the community of the United Kingdom. That finding has not been challenged. I explained to the appellant that Judge Chohan went on to allow his appeal on Article 3 and Article 8 ECHR grounds, and summarised why the respondent claims Judge Chohan was wrong to do so in law. Understandably, since the issues that arise in the appeal before me are matters of law, the appellant did not wish to say anything in response to the grounds of appeal.

10. On behalf of the respondent, Ms Arif relied upon the grounds of appeal. She confirmed that as matters stand the respondent accepts the appellant could not be removed to Zimbabwe. She confirmed that the refugee status previously granted to the appellant has now been revoked, and that the respondent will reach a decision as to the appropriate grant of leave to the appellant once this appeal has been determined.

Decision

11. The effect of the certification under s72(2) of the 2002 Act and the decision of First-tier Tribunal Judge Chohan that the appellant has not rebutted the statutory presumption under s72(2) is that the appellant cannot benefit from the prohibition from expulsion or return, set out in Article 33 of the Refugee Convention, and the Tribunal was obliged to dismiss the appeal in so far as the appellant claimed that removal of the appellant from the UK, or a decision to revoke the appellant's protection status, would breach the UK's obligations under the Refugee Convention. The appellant has not challenged the findings and conclusions reached by Judge Chohan in that regard and as I explained to the appellant at the hearing before me, the appellant is now substantially out-of-time to mount any challenge to those findings and the conclusion reached by Judge Chohan.
12. I have read the respondent's decision of 23 July 2020 and I am satisfied, as the respondent submits, that the respondent has not made any decision to refuse a human rights claim made by the appellant giving rise to a right to appeal to the Tribunal under s81(1)(b) of the 2002 Act on the ground set out in s84(1)(c) that removal of the appellant from the UK would be unlawful under section 6 of the Human Rights Act 1998. The respondent refers to Article 3 in her decision but does so on the premise that consideration of the appellant's particular circumstances identifies that at this point in time, there is a potential breach of his rights under Article 3 of the ECHR. The respondent confirms that the removal of the appellant will therefore not be enforced at this time, and his circumstances will remain under review. Ms Arif confirmed that now that the appellant's refugee status has been revoked, the respondent will reach a decision as to the appropriate grant of leave to the appellant given she does not propose to enforce his removal at this time.
13. It follows that in my judgement, Judge Chohan erred in allowing the appellant's appeal on Article 3 and Article 8 grounds and the decisions to do so, must be set aside. I simply wish to add that it is unfortunate that when Judge Chohan was taking steps to identify the issues in the appeal,

as set out in paragraph [5], the Presenting Officer indicated that the issues included 'Article 8 in respect of family and private life'. A Judge is entitled to rely upon a representative to assist the Tribunal to identify the issues in the appeal to that the focus at the hearing and in the decision, can be upon the issues identified. Here it seems, Judge Chohan was not assisted by the Presenting Officer in his task.

14. As to disposal, there is no reason why the decision cannot be remade in the Upper Tribunal.

Remaking the decision

15. As Judge Chohan found, the appellant is to be regarded as having committed "a particularly serious crime and to constitute a danger to the community of the United Kingdom". The consequence of the respondent's decision to certify that the presumption applies, is that on an appeal under s82(1) of the 2002 Act, the Tribunal must begin substantive deliberation on the appeal by considering the certificate, and, if in agreement that the presumption applies, must dismiss the appeal in so far as it relies on the ground that the removal of the appellant would breach the UK's obligations under the Refugee Convention. The presumption is rebuttable.
16. As I have said, Judge Chohan found that the appellant has failed to rebut the presumption in section 72 of the 2002 Act. That finding and conclusion has not been challenged by the appellant and is preserved. If, as here, the Tribunal agrees that the presumption applies, it must dismiss this appeal in so far as the appellant relies upon the ground that the appellant's removal from the UK would breach the UK's obligations under the Refugee Convention. I do so.
17. The respondent has not made any decision to refuse a human rights claim made by the appellant and in the circumstances I do not need to consider whether the removal of the appellant from the UK would be unlawful under section 6 of the Human Rights Act 1998. If and when such a decision is made by the respondent, that is likely to give rise to a right of appeal.

Notice of Decision

18. The decision of First-tier Tribunal Judge Chohan promulgated on 27 February 2023 is set aside.
19. The appellant's appeal against the respondent's decision to revoke the appellant's protection status is dismissed.
20. The appellant's appeal on humanitarian protection grounds is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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3 November 2023