Neutral Citation Number: [2008] EWCA Civ 977

Case No: C4/2007/2838

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT, QUEEN'S BENCH DIVISION,
ADMINISTRATIVE COURT
MR JUSTICE BEAN
CO/5617/2006

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/08/2008

Before :

LORD JUSTICE THORPE
LORD JUSTICE RIX
and
LORD JUSTICE STANLEY BURNTON

- -

Between :

SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Appellant**
- and -	
TB (JAMAICA)	**Respondent**

- -
- -

Robert Jay QC (instructed by **the Treasury Solicitor**) for the **Appellant**
Manjit Gill QC and **Joanne Rothwell** (instructed by **Irving & Co**) for the **Respondent**

Hearing date: 30 July 2008

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Judgment

Lord Justice Stanley Burnton:

Introduction

1. This is an appeal by the Home Secretary from the judgment of Bean J given on 30 November 2007 in which he held that it had been an abuse of process and unlawful for the Secretary of State to have refused to grant to the Respondent refugee status and 5 years' leave to remain in this country on the ground that he constitutes a danger to the community within the meaning of article 33 of the 1951 Convention relating to the Status of Refugees and section 72 of the Nationality, Immigration and Asylum Act 2002.

2. This case also raises the question of the compatibility of section 72 with the Asylum Convention. That issue has not been argued before us at the present hearing. It has also been raised in the case of *Ndreu, EN (Serbia) v Secretary of State for the Home Department* in which permission to appeal has been granted, and it was agreed between the parties to the present appeal that if the Secretary of State for the Home Department's appeal succeeded on the issue of abuse of process, the hearing by the Court of Appeal of other issues should be stood over to be heard immediately after the appeal in that case.

3. After hearing the submissions of Mr Jay QC on behalf of the Home Secretary, we informed the parties that the appeal would be dismissed for reasons that would be set out in the Court's written judgments. These are my reasons for dismissing the appeal.

The relevant Convention and statutory provisions

4. It is easier to understand the issues in this case if I first refer to the pertinent Convention and statutory provisions.

5. Articles 1 and 33 of the Convention relating to the Status of Refugees, as amended (in effect) by the 1966 Protocol relating to the Status of Refugees are, so far as relevant, as follows:

> Article 1. Definition of the term "refugee"
>
> A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:
>
> …
>
> (2) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
>
> Article 33. Prohibition of expulsion or return ("refoulement")

> 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

6. Section 72 of the Nationality, Immigration and Asylum Act 2002, so far as is relevant, is as follows:

> Section 72 Serious criminal
>
> (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
>
> (2) 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.
>
> (3) 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—
>
> (a) he is convicted outside the United Kingdom of an offence,
>
> (b) he is sentenced to a period of imprisonment of at least two years, and
>
> (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.
>
> (4) 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—
>
> (a) he is convicted of an offence specified by order of the Secretary of State, or

> (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).
>
> (5) An order under subsection (4)—
>
> (a) must be made by statutory instrument, and
>
> (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
>
> (6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
>
> (8) Section 34(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (no need to consider gravity of fear or threat of persecution) applies for the purpose of considering whether a presumption mentioned in subsection (6) has been rebutted as it applies for the purpose of considering whether Article 33(2) of the Refugee Convention applies.
>
> (9) Subsection (10) applies where—
>
> (a) a person appeals under section 82, 83 or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and
>
> (b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).
>
> (10) The adjudicator, Tribunal or Commission hearing the appeal—
>
> (a) must begin substantive deliberation on the appeal by considering the certificate, and
>
> (b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).

7. Paragraphs 327 to 352 of the Immigration Rules (HC 395) govern applications for asylum under the Refugee Convention. The provisions of paragraph 334 as they applied at the material time were as follows:

> An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:
>
> (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and
>
> (ii) he is a refugee as defined by the Convention or Protocol; and
>
> (iii) refusing his application would result in his being required to go (whether immediately or after the time limited by an existing leave to enter or remain) in breach of the Convention and Protocol, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group."

8. Sections 1 and 2 of the Asylum and Immigration Appeals Act 1993 provide:

> 1. In this Act—
>
> 'the 1971 Act' means the Immigration Act 1971 ;
>
> 'claim for asylum' means a claim made by a person (whether before or after the coming into force of this section) that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed from, or required to leave, the United Kingdom; and
>
> 'the Convention' means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention.
>
> 2. Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention.

9. Reference should also be made to Part 5 of the 2002 Act, which contains the provisions as to appeals from decision of the Secretary of State to the Asylum and Immigration Tribunal.

The facts

10. TB was born in Jamaica on 23rd December 1977. He first arrived in this country on 21 October 1998. According to the Home Secretary's letter of 6 June 2006, he was found to be in possession of 17 packages of cannabis, but this is disputed by him. He was refused leave to enter and removed on 24 October 1998.

11. In November 1999 he again arrived in the UK. He was refused leave to enter but was granted temporary admission. Two days later he absconded. He was subsequently arrested for supplying Class A drugs.

12. In June 2001 TB met and began a relationship with Zalma Ahmad, a dual British and Irish national. In November 2002 their daughter, Alicia, was born.

13. On 1st August 2003 he pleaded guilty at the Crown Court at St Albans to the drugs supply offence and also to a breach of bail, and on 14th October 2003 he was sentenced to a total of four years and three months' imprisonment. That sentence was reduced on appeal to a total of three years and ten months.

14. On 12 August 2004 The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004, made on 20 July 2004, came into force. It specified, among others, the offence of supplying Class A drugs, i.e. the offence to which TB had pleased guilty, for the purposes of section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002.

15. On the same date as it came into force TB married Zalma.

16. By letters dated 24th August and 28th September 2004, the Secretary of State signified his intention to make a deportation order against the Respondent. On 25th February 2005 TB claimed asylum and also alleged that his removal would constitute a breach of his human rights under Articles 2, 3 and 8 of the European Convention on Human Rights. On 6th April 2005 the Secretary of State refused both claims. The decision letter did not refer to section 72 and did not contend that TB was a danger to the community; it did not contend that by virtue of his criminal conduct he was excluded from the benefit of Article 33.1 of the Asylum Convention. It rejected the claim for asylum and the human rights claim on the grounds that his claims were not credible, and that in any event there would be no real risk to him on return, and the interference with his private and family life was justified under Article 8.2.

17. On 21st April 2005 TB appealed to the Asylum and Immigration Tribunal against the decision to refuse asylum and the rejection of his human rights claim. Before Bean J it was accepted on behalf of the Secretary of State that the Tribunal's jurisdiction must have arisen under section 82(2)(a) of the Nationality Immigration and Asylum Act 2002 (appeal against refusal of leave to remain) and section 82(2)(j) (appeal against an intended deportation order). Before this Court, Mr Jay said that the jurisdiction had arisen under section 82(2)(g) (removal of persons who are unlawfully in the United Kingdom), but it is irrelevant to the present issue under which paragraph of subsection (2) the jurisdiction arose.

18. The hearing took place before Immigration Judge Goldfarb on 22nd August 2005. Both TB and the Secretary of State were represented. Not surprisingly, in view of the terms of the decision letter of 6 April 2005, the issue, subsequently raised by the Secretary of State in correspondence, whether by reason of the Respondent's conviction and sentence in the Crown Court he was a danger to the community and excluded from the protection of the Refugee Convention by Article 33.2 was not raised. Section 72 of the 2002 Act and the presumption it creates were not mentioned.

19. Mr Jay QC has been unable to give any reason for the omission of any reference to Article 33.2 or to section 72 of the 2002 Act in either the decision letter or on the appeal, and I infer that it was due either to lack of resources or to a failure to exercise proper care (perhaps due to a lack of resources) in the consideration and preparation

of the Secretary of State's case. There is no basis for a finding that the omission was deliberate.

20. By her reserved determination promulgated on 12th September 2005, the Immigration Judge allowed TB's appeal on both Refugee Convention and Human Rights Convention grounds. She accepted his evidence that his life would be in danger if he were returned to Jamaica, and found that his deportation would infringe his rights under all three Convention Articles on which he relied. In relation to his criminal conviction, her determination included the following:

> 101. I also consider the notice of intention to deport, paragraph 364 of HC 395 and note that the public interest must be balanced against the factors as set out in paragraph 364.
>
> 102. With regards to age, the Appellant is a young man aged 28, he has spent approximately six years in the UK. With regards to his strength of connections with the UK he has a well-settled family life and his wife and daughter are British/Irish nationals.
>
> 103. I note the Appellant's personal history including his character, conduct and employment records. To deal with the last first, the Appellant has not been able to work in the UK and has I consider truthfully stated to the court that he has not worked. He cares for his family and daughter during the daytime whilst the child's mother is at work. I note the information provided to the court in respect of the criminal proceedings that the Appellant is previously of good character. I note his conduct in prison, namely that he undertook a number of courses which he completed successfully, he also tested negative for drugs which were conducted on a random basis, I also note his own evidence that since coming out of prison he has not been involved in any further criminal proceedings. I also note his time in prison and his achievements in his personal development whilst there.
>
> 104. … the Appellant and his family are now reunited after the Appellant had completed his prison sentence and are continuing to lead a family life in the best sense of the word. For him to be deported would be to place him in a situation of grave danger.
>
> 105. I also note the case of *Mert v SSHD* [2005] EWCA Civ 832 which decides that even though a serious office has been committed such as the supplying of drugs the deportation does not necessarily have to be upheld if there is family life in the United Kingdom. In that case, the Appellant was said to have committed an extremely serious criminal offence he was responsible for the supply of controlled drugs and sentenced to a period of nine years' imprisonment and the sentence reflects the serious (sic) of his sentence. In the case before me, whilst

> the Appellant has not attempted to minimise his earlier activities, I conclude from paragraph 4 of *Mert* that the Appellant's sentence which was far less also reflects the nature of his offence and how it was viewed by the court in sentencing him. I do not minimise his activities which were bound up in the drug scene but I conclude that he did not act in events which were so serious that nothing but deportation would be a response. I consider it is, here, an inappropriate response.

21. The Secretary of State did not seek to have that decision reconsidered or set aside. In accordance with the normal policy of the Home Secretary, as a person with refugee status, TB should have been given 5 years' leave to remain. However, on 25th January 2006 the Secretary of State wrote to the claimant's solicitors in the following terms:

> I am writing in connection with your above named client whose appeal to the Asylum and Immigration Tribunal was allowed on both asylum and human rights grounds on 2nd September 2005. The AIT found your client to be a refugee but as you will know Article 33(2) of the Refugee Convention allows a party to the Convention to expel a refugee who "having been convicted by a final judgment of a particularly serious crime constitutes a danger to the community of that country." You will be aware that on 1st August 2003 Mr [B] was convicted of being knowingly involved in the supply of heroin and crack cocaine for which he was eventually sentenced to 3 years and 9 months' imprisonment.
>
> Section 72(2) of the Nationality Immigration and Asylum Act 2002 provides that such a person will 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 UK if he is convicted in the UK of an offence and sentenced to a period of imprisonment of at least two years. This clearly covers your client. The presumption that your client constitutes a danger to the community of the UK is rebuttable, see section 72(6).
>
> I am therefore writing to invite you to supply any evidence you wish to put forward on behalf of your client rebutting the presumption set out in section 72(2). You have until 24th February 2005 to do this. Once we have received your reply, or on 24th February 2005 if you do not reply by then, we will decide whether Article 33(2) applies to Mr [B]. We will inform you of our decision in this matter. Whatever decision we reach under Article 33(2), we are not seeking to remove or deport your client from the UK in breach of his rights under the ECHR.

22. TB's solicitors replied by letter dated 22 February 2006. They contended that for the Secretary of State to raise an issue under article 33 of the 1951 Convention when it had not been raised at or before the appeal hearing was "an abuse of process and

power by the SSHD"; in addition, they referred to and relied upon the findings of the Immigration Judge.

23. Nonetheless, by letter dated 6 June 2006 the Secretary of State informed TB's solicitors that she had decided that Article 33(2) of the Refugee Convention applied to TB; she refused asylum and leave to enter and remain for the five-year period which TB sought and decided that he was entitled to temporary admission only. That last aspect of the decision, namely the grant of not even discretionary leave to remain but temporary admission, became unsustainable when the Court of Appeal delivered judgment in *R (S) and Others v the Home Secretary* [2006] EWCA Civ 1157, [2006] INLR 575, the Afghan Hijackers case, on 4th August 2006. As a result, the Secretary of State has granted TB periods of discretionary leave for up to six months at a time.

24. The practical consequence of the Secretary of State's decision in her letter of 6 June 2006 is that instead of the 5 years' leave to remain to which he was entitled on the basis of the Immigration Judge's determination, TB has been granted only 6 months' discretionary leave; and if he wishes to remain here he will have regularly to apply for an extension of that leave. The Secretary of State accepts that as a result TB is disadvantaged in comparison with what his situation would have been if he had been granted 5 years' leave to remain.

The contentions of the parties

25. For the Secretary of State, Mr Jay submitted:

    (a) Section 72 does not require the issue of a certificate under sub-section (9) on these particular facts. Had Parliament's intention been that the Secretary of State must issue a certificate for the purposes of an appeal to the AIT, the wording of section 72(9) and (10) would have been different.

    (b) The decision of the Secretary of State to rely on section 72 is amenable to judicial review, not merely as to the merits of the decision as to whether the convicted person is a danger to the community but also as to the timing of the decision itself.

    (c) The Immigration Judge had not made a finding on paragraph 334(iii) of HC 395.

26. For TB, Mr Manjit Gill QC and Miss Rothwell submitted that it was unlawful for the Secretary of State to seek to apply Article 33.2 and section 72, (assuming it to be compatible with the Refugee Convention), in the circumstances of this case. Among other submissions, they contended that the Secretary of State was bound to honour the decision of the Immigration Judge, and that her attempt to invoke those provisions was inconsistent with her duty.

The decision of the Judge

27. In his admirably clear *ex tempore* judgment, Bean J held that the decision of the Secretary of State was an abuse of the process. The principles requiring finality in litigation, and that a party should not be vexed twice, exemplified by *Henderson v Henderson* (1843) 3 Hare 100 and *Johnson v Gore Wood* [2002] 2 AC 1, are

applicable in public law as in private law. Just as applicants in asylum and immigration cases are required to put forward all the matters on which they rely by the "one-stop" warning which they are given, so must the Secretary of State bring forward his entire case when an applicant appeals to the AIT. Otherwise, the applicant is relegated to seeking judicial review of the Secretary of State's decision to invoke Article 33.2 and section 72, which, as Mr Jay (who appeared before the Judge as he appeared before this Court) realistically accepted was a less advantageous remedy which would make it more difficult for him to succeed. Accordingly, the Judge held that the Secretary of State's decision had been unlawful.

Discussion

28. In my judgment, to a significant extent the Secretary of State's arguments have placed too much importance on section 72. It has always been open to the Secretary of State to contend that an applicant for asylum was excluded from the protection afforded by Article 33.1 because he had been convicted of a particularly serious crime and constituted a danger to the community of this country. Subsections (2) and (3) in effect define a crime that has been the subject of a sentence of imprisonment of at least 2 years as particularly serious, in the case of subsection (3) with the added requirement where the conviction is a foreign one, that the crime would have been punishable by imprisonment of at least 2 years if there had been a conviction for a similar offence in this country. Subsection (4) authorises the Secretary of State to define offences as particularly serious and to certify that a foreign conviction is for an offence similar to such an offence. Subsections (2), (3) and (4) create a rebuttable presumption (see subsection (6)), where the applicant has committed an offence to which they apply, that he constitutes a danger to the community. Subsections (9) and (10) make provision for certification and procedure before the Tribunal.

29. Given the general wording of subsection (1), I accept that the presumptions are to be applied generally, both by the Secretary of State when making a decision on an application for asylum and by the Tribunal on the hearing of an appeal. (For present purposes, it is unnecessary to consider proceedings before the Special Immigration Appeals Tribunal separately.) In my judgment, once the facts giving rise to the statutory presumptions have been established, it would be an error of law for an Immigration Judge to fail to apply a presumption required by the section, irrespective of whether or not the Secretary of State had issued a certificate under subsection (9)(b). Indeed, Mr Jay accepted that there has been no statutory certificate in this case. The only effect of a certificate is to require the Tribunal to address the certificate and any issue as to the rebuttal of the presumption of dangerousness at the beginning of the hearing of the appeal. I assume that the certificate is of greater value where the conviction relied upon is outside the United Kingdom. An appellant may seek to displace the certificate by showing that he has not in fact been convicted of a relevant offence or to rebut the presumption of dangerousness by establishing that he does not in fact constitute a danger to the community.

30. This demonstrates that it was open to the Secretary of State to seek to establish that Article 33.2 applied to TB on the hearing of his appeal; and it was open to the Secretary of State to seek to appeal the determination of the Immigration Judge on the ground that in failing to apply the statutory presumption she erred in law. She did not do so, and it is not easy to see why, if she is bound by the Immigration Judge's decision, she should be able to take the same point subsequently. I asked Mr Jay why,

if she can take the Article 33.2 point after an adverse determination by an Immigration Judge, she could not take any other point under the Refugee Convention after an adverse determination, and I do not think he was able to provide a satisfactory answer. I see no basis on which it could be said that section 72 confers on Article 33.2 any special status that enables that provision to be relied upon when others cannot.

31. Moreover, the Immigration Judge considered, as she had to, whether TB's criminal conviction justified interfering with his Article 8 rights. She held that it did not. Her findings, set out in paragraphs 101 to 104 of her determination, are inconsistent with his constituting a danger to the community. It is evident, therefore, that if section 72 and Article 3.2 had been raised before her, she would have held that the statutory presumption of dangerousness had been rebutted.

32. As a matter of principle, it cannot be right for the Home Secretary to be able to circumvent the decision of the IAT by administrative decision. If she could do so, the statutory appeal system would be undermined; indeed, in a case such as the present, the decision of the Immigration Judge on the application of the Refugee Convention would be made irrelevant. That would be inconsistent with the statutory scheme.

33. The principle that the decision of the Tribunal is binding on the parties, and in particular on the Home Secretary, has been consistently upheld by the Courts. In *R (Mersin) v Home Secretary* [2000] EWHC Admin 348, Elias J said:

> In my opinion there is a clear duty on the Secretary of State to give effect to the Special Adjudicator's decision. Even if he can refuse to do so in the event of changed circumstances or because there is another country to which the applicant can be sent, there is still a duty unless and until that situation arises. It would wholly undermine the rule of law if he could simply ignore the ruling of the Special Adjudicator without appealing it, and indeed Mr. Catchpole [counsel for the Home Secretary] does not suggest that he can. Nor in my opinion could he deliberately delay giving effect to the ruling in the hope that something might turn up to justify not implementing it. In my judgment, once the adjudicator had determined the application in the applicant's favour, the applicant had a right to be granted refugee status, at least unless and until there was a change in the position.

34. In *R (Boafo) v Home Secretary* [2002] EWCA Civ, [2002] 1 WLR 44, Auld LJ said at [26] in a judgment with which the other members of the Court of Appeal agreed, "… an unappealed decision of an adjudicator is binding on the parties." In *R (Saribal) v Home Secretary* [2002] EWHC 1542 (Admin), [2002] INLR 596, Moses J said:

> 17. The decision in *ex parte Boafo* demonstrates an important principle at the heart of these proceedings. The Secretary of State is not entitled to disregard the determination of the IAT and refuse a claimant's right to indefinite leave to remain as a refugee unless he can set aside that determination by appropriate procedure founded on appropriate evidence.

35. Of course, different considerations may apply where there is relevant fresh evidence that was not available at the date of the hearing, or a change in the law, and the principle has no application where there is a change in circumstances or there are new events after the date of the decision: see Auld LJ in *Boafo* at [28]. But this is not such a case.

36. The judge described the attempt by the Secretary of State to raise the section 72 issue after the Immigration Judge's decision and to refuse leave to enter and to remain as an abuse of process. That is an expression normally reserved for abuses of the process of the courts. The Secretary of State's action might be castigated as an abuse of power, but I would prefer to avoid pejorative expressions of uncertain denotation and application and to hold simply that the Secretary of State was bound by the decision of the Immigration Judge and that her subsequent action was unlawful on the ground that it was inconsistent with that decision. It follows that the judge's conclusion was correct. The Home Secretary is bound to grant TB the leave to remain to which the Immigration Judge's decision entitled him.

37. I would finally mention two matters. First, Mr Gill and Miss Rothwell accept that the presumptions in section 72(2), (3) and (4) as to what convictions are of "particularly serious" crimes are irrebuttable. This is, I assume, because subsection (6) provides only that the presumption of dangerousness in those subsections is rebuttable, and, to use the Latin maxim, *expressio unius est exclusion alterius*. I have assumed that this is correct, notwithstanding that the words in parentheses in subsection (9)(b) are unqualified.

38. Secondly, the Secretary of State's decision of 6 June 2006 may well have been legally defective on an additional ground. Having considered the matters relied upon by TB as rebutting the statutory presumption, she stated:

> … the Secretary of State considers there to be reasonable grounds for regarding your client to be a danger to the community, …

As Mr Jay accepted, Article 33.2 distinguishes between exclusion from the benefit of Article 33.1 on the ground of danger to the security of the country in which he is and exclusion on the ground of conviction of a particularly serious crime and danger to the community. In the former case, it is sufficient that there are reasonable grounds for regarding the refugee as a danger to security; in the latter case, the refugee must in fact have been convicted of a particularly serious crime and must in fact constitute a danger to the community. It was therefore insufficient for the purposes of Article 33.2 for the Secretary of State to consider only that there were reasonable grounds for regarding TB to be a danger to the community.

Lord Justice Rix

39. I agree.

Lord Justice Thorpe

40. I also agree.