IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00025/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 15 February 2016	**On 18 April 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

YUSUF ISMAIL FARAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood, Counsel instructed by Forward & Yussuf Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Somalia born on 6 September 1981. He is said to have arrived in the UK on 15 September 1990.

2. On 8 May 2015 a decision was made to make a deportation order against the appellant under the automatic deportation provisions of s.32(5) of the

© CROWN COPYRIGHT 2016

UK Borders Act 2007 ("the 2007 Act"). That decision followed the appellant's conviction on 1 November 2007 for an offence of conspiracy to possess firearms. He received a sentence of 18 years' imprisonment on 26 November 2007, reduced on appeal to 14 years' imprisonment on 6 October 2009.

3. As well as the deportation decision, the respondent issued a certificate under s.72(2) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act")(presumption of serious crime and danger to the community).

4. Furthermore, a decision was taken to cease the appellant's refugee status, with reference to Article 1C(5) of the Refugee Convention and paragraph 339A(v) of the Immigration Rules.

5. The appellant's appeal against the respondent's decisions came before First-tier Tribunal Judge Miller ("the FtJ") on 14 October 2015, whereby the appeal was dismissed.

6. The grounds of appeal before the Upper Tribunal, to summarise, contend that the FtJ failed to engage with the appellant's argument in relation to the s.72 certificate and its relationship to Article 1C(5), taking into account that the appellant had been granted refugee status prior to his arrival in the UK on 15 September 1990. The related point is in relation to whether the Secretary of State is permitted to use criminality as a trigger for cessation of refugee status.

7. It is further contended that the FtJ failed to give appropriate consideration to the appellant's case in relation to Article 3 of the ECHR, bearing in mind in particular the length of time that the appellant had been absent from Somaliland, his convictions in the UK and the extent to which they would be revealed on his return, as well as his protection needs on return.

8. Permission was sought at the hearing before me to amend the grounds of appeal to include the contention that the respondent's decision notice is invalid for want of informing the appellant that he was entitled to appeal against the decision to revoke his protection status, and wrongly stating that he had a right of appeal against the refusal of a human rights claim. I granted permission for the grounds to be amended in that respect, Mr Walker having had no objections.

The First-tier Tribunal's Decision

9. The FtJ noted that the appellant and his family were granted refugee status prior to their arrival in the UK in September 1990. He referred to correspondence between the respondent and the UNHCR in which the UNHCR expressed concern regarding possible conflation between criminal offending and cessation of refugee status.

10. As regards the evidence before him, he referred to the appellant's mother having returned to Burao, in Somaliland, in 2004, when her sister died. Her evidence was that she stayed for a month and eight days. He also

noted that the appellant's brother said that he had gone to Somaliland twice, in June 2012 and September 2015, noting that the place where the appellant's brother stayed, Hargeisa is where, according to the decision in *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia* CG [2011] UKUT 00445 (IAC), return by air would in general involve no real risk of serious harm.

11. In the same paragraph, [43], he said that he did not accept the appellant's brother's evidence that he does not know anyone in the Burao area. Having on his own admission gone to the country twice, and having undertaken projects for schools there, the FtJ stated that he did not find it credible that he would not have formed relationships with people in the area. Whether or not the appellant still has family in that area he said he found "difficult to say", bearing in mind that neither the appellant nor his family want him to be returned.

12. At [44] he said that he found it significant that the appellant's brother did not at any stage refer to the situation in Somaliland as being dangerous, either in relation to his own visits there or in terms of the prospect of the appellant returning. He referred to the appellant's brother's witness statement expressing concerns about lack of family there, but significantly not expressing any fear in terms of risk to the appellant.

13. Having referred to extracts from background evidence in the respondent's decision letter, the FtJ concluded at [46] that the appellant would not be subject to persecution or serious harm if returned.

14. At [47] he said that given the appellant's conviction, there are strong grounds for regarding him as a danger to the community of the United Kingdom, referring also to his other convictions.

15. He considered at [48] the claim that the appellant has a son, aged 10 years. He noted that the appellant's son had been cared for throughout his life by the child's mother and that it was only when his son was aged 7 years that contact was made between him and the appellant. He said that he was sceptical as to the degree to which the appellant and other family members are "using" his son in order to enhance his argument for being allowed to stay in the UK. Furthermore, he made reference to the public interest in deportation in terms of the Immigration Rules.

16. As regards Article 8 of the ECHR, he referred to the appellant having had at least two close relatives visit Somalia since they left the country and there was no reason why, were the appellant to be returned there, they would not be able to visit him. He took into account that the appellant does not suffer from any significant health problems, and his age of 34 years. He found that he is familiar with the culture and language of Somalia, through his mother in particular, and his brother and mother both admit to having Somali friends in the UK. He concluded that the appellant would quickly be able to reintegrate, notwithstanding that he came to the UK at the age of 9 years.

Submissions

17. Mr Haywood relied on the grounds of appeal and the skeleton argument prepared for the hearing before me. In relation to the point about the validity of the respondent's notice of decision, he referred to [10] of the skeleton argument, which itself refers to the respondent's letter dated 8 May 2015 addressed to the appellant. Mr Haywood relied on the fact that the letter states that the appellant does not have a right of appeal against the decision to deport him but does have a right of appeal against "the decision to refuse your human rights claim". With reference to the decision letter itself, the grounds available to the appellant included a right of appeal in relation to the decision to revoke his protection status. The decision had to comply with the Immigration (Notices) Regulations 2003) ("The Notices Regulations"). An invalid decision cannot confer jurisdiction on the First-tier Tribunal ("FtT"). The decision in *R (E (Russia)) v Secretary of State for the Home Department* [2012] EWCA Civ 357 was relied on.

18. In relation to ground 1 of the original grounds before the Upper Tribunal ("UT"), Mr Haywood submitted that the main point that should have been addressed is the question of the revocation of protection status. To that extent there was said to be a relationship to the amended ground.

19. As regards the original ground 2 (Article 3 of the ECHR) the respondent's case was predicated on changed conditions in Somaliland in particular. The cessation clauses referred to a person's country of nationality, although Somaliland does not actually exist as a country. The appellant is a citizen of Somalia. The respondent accepts in the decision letter that people without a substantial connection with Somaliland face very difficult circumstances, and people attempting to relocate face deplorable conditions. Furthermore, the UNHCR letter to the respondent referred to how important it was to look at the consequences of return with reference to any family ties. The conditions potentially facing the appellant on return were not analysed by the FtJ. The evidence before the FtJ was that the appellant has no family connections there.

20. It was submitted that there was no engagement with the alternative protection case in terms of someone outside Somalia with a lack of familiarity with the country, and the fact that to be allowed entry one would need to show some connection with Somaliland. His asylum interview gives the impression that he knows very little about his background in Somalia. The issues of vulnerability and insecurity all needed to be analysed by the FtJ. It was not sufficient to extrapolate from, for example, the appellant's brother's visits to Somaliland, and conclude that the appellant would have a support network there. The FtJ's focus was on the 'asylum-style' paradigm.

21. Mr Walker referred to the background to the appellant's arrival in the UK, stating that the respondent's decision letter does not make the history clear in that the appellant and his father's place of birth is Somaliland.

Thus, the FtJ was entitled to conclude that the appellant would not be at risk there.

22. It is clear from the evidence before the FtJ, and in his decision, that the appellant speaks Somali. Returning to Somaliland he would be aware of the traditions there, bearing in mind his background. It was submitted that *RY (Sri Lanka) v Secretary of State for the Home Department* [2016] EWCA Civ 81 supports the Secretary of State's approach in this case in terms of the appellant's removal and the decision to cease his refugee status.

23. So far as the amendment to the grounds is concerned, the issue raised lacks force when one considers that the main focus for the Secretary of State was the seriousness of the appellant's criminal offence.

24. In reply, Mr Haywood submitted that the submissions on behalf of the respondent did not undermine the validity point.

25. In relation to the appellant's return, it is true that the evidence indicated that the appellant spoke some Somali, and that he was born in Somaliland, but that is not a sufficient basis for the FtJ's conclusions. The appellant was close to being an IDP.

26. So far as the decision in *RY* is concerned, that only confirms that the Secretary of State is entitled to apply Article 33(2) when a cessation clause is applied. In any event, on behalf of the appellant the emphasis was on the second ground of appeal.

My Assessment

27. Although in submissions Mr Haywood said that the cessation clauses referred to a person's country of nationality, and Somaliland does not actually exist as a country, the point was not developed in argument. It does not appear to have been a matter advanced before the FtT, either in the original grounds of appeal, in the skeleton argument or in submissions. It is not in the grounds to the UT or in the skeleton argument before me. As a basis for argument it has no merit in any event, but I need not explore the matter further in the light of what I have said about it not having been raised before.

28. In terms of the 'defective notice' point, it would appear from the amendment to s.84 of the 2002 Act, brought about by s.15 of the Immigration Act 2014, that there is no longer an available ground of appeal that a decision (of the Secretary of State) is not in accordance with the law. On that basis, it could perhaps be said that what is argued on behalf of the appellant about the respondent's defective decision notice, could not, even if the argument is successful, result in a conclusion that the respondent's decision is not in accordance with the law.

29. Having said that, it does seem to me that a defective decision notice *may*, depending on the circumstances, result in a finding that the Tribunal,

whether that be the FtT or the UT, lacks jurisdiction to hear an appeal. That would be on the basis that no valid decision was taken in the first place.

30. All that said, I do not consider that there is any merit in the amended ground in relation to the validity of the respondent's decision notice. The notice is said to be invalid because it does not comply with the Notices Regulations. More specifically, whereas the respondent informed the appellant that he had a right of appeal against the refusal of a human rights claim, it did not inform him that he had a right of appeal against the decision to revoke his protection status, a right of appeal provided for by the amended s.82 of the 2002 Act.

31. Regulation 5 of the Notices Regulations sets out what is to be included in the contents of a notice of immigration decision. To summarise, the notice is required to include, or be accompanied by, a statement which advises the person of his right of appeal and the statutory provision on which his appeal right is based. In addition, amongst other things it must also state the grounds on which such an appeal may be brought. It is those particular provisions of the Notices Regulations which it is said on behalf of the appellant are infringed by the respondent's decision.

32. The appellant's skeleton argument before the UT does not in fact quote the applicable provision in relation to the available grounds of appeal in terms of revocation of protection status. Those grounds are now contained in s.84(3)(a) and (b). They are that the decision to revoke protection status breaches the United Kingdom's obligations under the Refugee Convention and/or that the decision breaches the United Kingdom's obligation in relation to persons eligible for a grant of humanitarian protection. The appellant's skeleton argument sets out grounds of appeal in relation to a *refusal* of a protection claim. For the purposes of the appellant's argument however, the difference is not material.

33. One of the respondent's letters dated 8 May 2015 does not give the full reasons and analysis of the respondent's decision. It informs him that he had previously been notified of liability to deportation, and records that representations were made on his behalf as to why he should not be deported. The letter states that these have been taken as a human right claim. The letter goes on to explain that it is not accepted that the appellant falls within any of the Exceptions set out in s.33 of the 2007 Act. It states that he does not have a right of appeal against the decision to deport him but he does have a right of appeal against the decision to refuse a human rights claim, referring to s.82(1) of the 2002 Act, and stating that the appeal can be advanced from within the UK.

34. The decision letter itself, also dated 8 May 2015, provides the detailed analysis of the respondent's reasons. It is to be noted that at the bottom of page 17 it tells the appellant that he has a right of appeal "against the decision to refuse your human rights claim", referring again to s.82(1) of

the 2002 Act. It goes on to state that any appeal must be on the grounds that his removal would breach the UK's obligations under the Refugee Convention, or the UK's obligations in relation to persons eligible for a grant of humanitarian protection, or that it would be unlawful under s.6 of the Human Rights Act 1998. It informs him that he must not appeal on grounds which do not apply to him.

35. It is the case therefore, that the appellant was not informed that he had a right of appeal against the decision to revoke his protection status. It was not suggested on behalf of the respondent before me that the 'new' appeal rights were not in force at the time of the respondent's decision. Those new appeal rights are introduced by s.15 of the 2014 Act, substituting a new s.82 into the 2002 Act. Given that it was not suggested that those new appeal rights were not in force at the date of the respondent's decision, it is fortunately not necessary for me to explain with reference to the relevant commencement orders, with their transitional and saving provisions, the process by which s.15 came into force. It suffices to state that it came into force on 6 April 2015.

36. It does seem to me that the respondent's decision does not fully comply with the Notices Regulations, in that it did not notify the appellant of his right of appeal against the decision to revoke his protection status. The deportation element of the respondent's decision, it seems to me correctly, was identified within the decision to refuse his human rights claim, about which he was notified of his right of appeal.

37. Whilst however, the appellant was not notified of his right of appeal against the decision to revoke his protection status, he was nevertheless notified that he had a right of appeal on Refugee Convention grounds. Had the respondent informed him that he had a right of appeal against the decision to revoke his protection status, under s.84(3)(a), that is, in almost identical terms, the ground of appeal which would have been notified to him.

38. Whilst, on one view, the validity of a notice of decision can be determined on a self-contained basis and with reference to the notice alone, it is clear from *E (Russia)* at [31] that a defect in a notice might be remedied by the contents of accompanying correspondence. Extending the point, it may be that whether there is "substantial compliance" with the Notices Regulations may be able to be deduced from other sources, such as for example, an appellant's grounds of appeal to the FtT. In that way one may be able to judge whether there was substantial compliance because an appellant was not misled in any way. In the grounds of appeal before the FtT in the case of the appeal before me, at [5] complaint is made about the decision to cease the appellant's refugee status. It is not the case therefore, that the appellant was misled.

39. Those points aside, I am in any event satisfied that there was substantial compliance with the Notices Regulations given that the appellant was notified of his right of appeal against the respondent's decision (albeit that

the decision was wrongly characterised) on Refugee Convention grounds. This view is consistent with what was said in *E (Russia)* at [42] in relation to "substantial compliance", examples included in that paragraph being where the claimant had been made aware by other correspondence from the respondent that he did in fact have an in-country right of appeal, because the FtT had accepted an in-country appeal from the claimant or because he had been allowed to present his appeal in the UK, having been permitted to re-enter the country to do so. Although the appeal before me does not concern the same issue, i.e. whether there was an in-country right of appeal, similar considerations apply.

40. It is also to be borne in mind that the validity of the respondent's notice of decision was not an issue raised before the FtT. I was not addressed on the question of whether there could be any waiver of invalidity, and I was not directed to any authorities on the point. However, the fact that the matter was not raised before the FtT could also be said to inform the assessment of whether there was substantial compliance with the Notices Regulations in that it was not suggested to the contrary by the appellant in the appeal before the FtT. Furthermore, it is apparent from the skeleton argument that was before the FtT that the issue of revocation of the appellant's refugee status was canvassed on behalf of the appellant.

41. In relation to the other two grounds of appeal, as originally pleaded before the UT, Mr Haywood acknowledged that the skeleton argument before the UT does not actually refer to ground 1, which is headed "Section 72 Certificate and criminality as a reason for ceasing refugee status". The assertion in that ground is that the FtJ failed to deal with the issue of the s.72 certificate "in a proper context". The point is developed in terms of whether a refugee's criminal conviction can be used as a trigger for cessation of refugee status. The grounds refer to the decision in *Dang (Refugee – query revocation – Article 3)* [2013] UKUT 00043 (IAC), also relied on in the skeleton argument before the FtT.

42. It is the case that the FtJ did not refer to the decision in *Dang* but did at [41] set out the concerns of the UNHCR expressed in its letter dated 17 December 2014 about the potential of "risk of introducing substantive modifications to this cessation clause by adding the provisions of Article 33(2) as a basis for consideration of the cessation of refugee status under Article 1C(5)". Article 33(2), in summary, mirrors the s.72 certificate (particularly serious crime and danger to the community).

43. Whilst the FtJ did not express a concluded view about the entitlement of the respondent to invoke Article 1C(5), I cannot see that there is any error of law in his having failed to do so, or if that is an error of law that it is one that requires the decision to be set aside. It is clear from the respondent's decision that the issues of cessation of refugee status and the appellant's criminal offending were not conflated in the sense of the convictions informing the assessment of whether Article 1C(5) applied. At [8] of the respondent's decision it states as follows:

> "However, it is the Home Office policy when an individual has committed an offence and is liable to deportation to review their immigration status and reconsider whether the individual is in continued need of international protection. It should be noted that the Home Office does not apportion any weight to an individual's conviction when considering whether cessation is appropriate. The decision reached is entirely based upon whether the subject's particular circumstances or that of his/her country of origin has changed so that international protection is no longer a requirement."

44. Whilst the concerns expressed by the UNHCR are entirely legitimate and understandable, it is not apparent from the respondent's decision that the application of Article 1C(5) was impermissibly informed by the appellant's convictions. Likewise, it is not apparent that the decision of the FtJ made that impermissible connection.

45. It is not separately argued that there is any error of law in the FtJ's conclusions that the appellant has been convicted of a particularly serious crime and represents a danger to the community. In other words, there is no ground of appeal in relation to his self-contained assessment of the s.72 certificate on its own terms.

46. The remaining ground of appeal alleges a failure on the part of the FtJ to deal with the appellant's appeal under Article 3 of the ECHR. It is said in the grounds that the FtJ failed to consider whether the appellant would face a real risk of serious harm if returned to Somalia.

47. However, it is apparent that the FtJ did deal with the question of risk on return, albeit not expressly referring to Article 3. At [44] he referred to the lack of any concern on that basis expressed by the appellant's brother in his witness statement. He referred at [45] to some background material in terms of social and economic conditions and the extent to which Somaliland could be considered to be stable. Importantly, at [46] he expressly stated that he did not accept that the appellant would be subject to persecution "or serious harm" if returned, also noting that the appellant comes from the Isaaq Clan (said in the refusal letter at [25] to be sizeable and cohesive, and occupying a large area of Somaliland).

48. Although the grounds as argued in oral submissions and the skeleton argument before me sought to widen the issue in terms of conditions on return, for example if the appellant were in the position of an IDP, the FtJ's decision in my judgement is sufficiently reasoned to encompass such arguments.

49. Thus, the FtJ referred at [43] to the appellant's mother's evidence that she had returned to Burao where the family come from, in 2004, staying for over a month. He referred to the appellant's brother having gone to Somaliland twice, in June 2012 and September 2015. He noted that the visits were related to employment but the appellant's brother also said that his reasons were to work and to see what the place was like. He stayed in a hotel in Hargeisa.

50. The FtJ rejected the contention by the appellant's brother that he does not know anyone there. He gave reasons for coming to that view. He found that it was not credible that the appellant's brother would not have formed relationships with people in the area. Again, the appellant's clan is relevant in this context, as already indicated. Admittedly in relation to the assessment of Article 8, at [51] the FtJ repeated that the appellant had at least two close relatives who had visited Somalia, that he does not suffer any significant health problems and that he is aged 34. He referred to the appellant being familiar with the culture and language of Somalia and that his brother and mother both admit to having Somali friends in the UK. He concluded that the appellant would quickly reintegrate, notwithstanding that he came to the UK at the age of 9.

51. In the circumstances, when read as a whole it is possible to deduce from the FtJ's conclusions on the facts that he was not satisfied that the appellant would be at risk of Article 3 ill-treatment on any basis. That is not to say that the FtJ's decision could not have been improved in its structure, or in terms of more reference to background material. Nevertheless, I am not satisfied that there is any error of law in the FtJ's decision in any respect.

Decision

52. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal therefore stands.

Upper Tribunal Judge Kopieczek 15/04/16