



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00042/2017

THE IMMIGRATION ACTS

Heard at : Field House
On : 8 January 2018

Decision and Reasons Promulgated
On: 24 January 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

JEYLANI ALI HUSSEIN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Lee, instructed by Braitch Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Somalia, born on 22 January 1974. Following a grant of permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his protection and human rights claims, it was found, at an error of law hearing on 1 November 2017, that the Tribunal had made errors of law in its decision and the decision was set aside, to the extent set out below. Directions were made for the decision to be re-made by the Upper Tribunal.

Background

2. The appellant is from Mogadishu in Somalia. He arrived in the UK on 15 November 2001 and claimed asylum on 28 November 2001 on the basis that he feared persecution in Somalia as a member of the Shekhaal clan, part of the Reer Hassan, a sub-clan of the Benadiri. He claimed that his family were shopkeepers and were targeted by the Hawiye militia and that he was stabbed in June 2001, his parents shot and his sisters raped. His asylum claim was refused but he was subsequently granted refugee status on 30 August 2002 after a successful appeal before the First-tier Tribunal.

3. On 21 October 2011 the appellant was convicted of aggravated burglary and sentenced to five years' imprisonment. It was decided, because of the situation in Somalia at the time, not to pursue deportation action. Following his conviction on 1 July 2015 for wounding/inflicting grievous bodily harm, whilst on licence for his previous conviction, the appellant was sentenced to two years and three months' imprisonment. On 12 August 2015 it was decided that his case met the criteria for automatic deportation in accordance with section 32(5) of the 2007 Act and on 26 August 2015 he was served with a decision to make a deportation order under section 32(5). The respondent also, in a letter of the same date, invited the appellant to seek to rebut the presumption under section 72 of the Nationality, Immigration Act 2002 that he had been convicted of a particularly serious crime and constituted a danger to the community.

4. On 3 August 2016 the appellant was notified of the respondent's intention to cease his refugee status under Article 1C(5) of the Refugee Convention and paragraph 339A of the immigration rules on the basis that the circumstances in connection with which he had been recognised as a refugee, namely on the basis of risk on return as a member of the minority Shekhaal clan, had ceased to exist. On 23 August 2016 the respondent notified the UNHCR of the same and invited a response, which was received in a letter dated 14 October 2016. In a decision dated 9 March 2017 the respondent decided to revoke the appellant's protection refugee status and refused his human rights claim and maintained the decision to deport him. A deportation order was issued the same day pursuant to section 32(5) of the 2007 Act.

5. The respondent, in making that decision, considered that the appellant had failed to rebut the presumption under section 72(2) of the 2002 Act and accordingly certified that the presumption applied to him, with the effect that he was excluded from protection under the Refugee Convention. He was also excluded from humanitarian protection for the same reasons. The respondent then went on to consider the issue of cessation and concluded that the situation regarding minority clans, which was the basis upon which he had been granted refugee status, had since changed. The respondent considered that the appellant could safely return to Mogadishu, where he was born. The respondent relied on the country guidance in MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442 in regard to the current improved situation in Mogadishu and considered that the appellant no longer required international protection on the basis of his minority clan membership and that he could rely on support from friendships established in the UK, from clan members and from his relatives in Canada who had helped him come to the UK

and could also seek employment in Mogadishu. The respondent therefore decided to revoke the appellant's refugee status. The respondent went on to consider Article 8 of the ECHR and concluded that the appellant could not meet the requirements in paragraph 399(a) and (b) or 399A and that there were no very compelling circumstances outweighing the public interest in his deportation. The respondent found that the appellant could not meet any of the exceptions to automatic deportation in section 33 of the 2007 Act.

6. The appellant appealed against that decision. His appeal was heard by Judge Gurung-Thapa in the First-tier Tribunal on 26 May 2017 and was dismissed in a decision promulgated on 19 June 2017. There was evidence before the judge of the appellant's problems with alcohol which led to him being homeless at one point and to his criminal offending. It was noted that the appellant had one sister who had been granted refugee status and who was a widow and on benefits. His other sister was deceased. The appellant's evidence was that he had no one to turn to for support in Somalia. His aunt in Canada was deceased and he had no contact with her direct family members. He had no financial support in the UK but was reliant on benefits. The appellant's evidence was that his home in Somalia was occupied by militia and he would be in danger as they would think that he was seeking reoccupation of his home.

7. The judge considered the circumstances of the appellant's offending and noted the lack of evidence to show that he had addressed his offending behaviour after being sentenced to five years' imprisonment. His current offence had been committed whilst he was on licence. He was released from prison on 14 September 2016 but was recalled on 21 October 2016 owing to his failure to comply with the condition to stop drinking. The judge found that the appellant had failed to rebut the presumption in section 72(2) of the 2002 Act and upheld the certificate. She found that the appellant was excluded from humanitarian protection. As regards Article 3 and cessation, the judge found that the appellant could return to Mogadishu and did not fall within the risk factors in MOJ. She noted that the UNHCR's response to the proposed cessation was based on the appellant having left Somalia at the age of seven, whereas he had in fact left at the age of 27. The judge found there to be no evidence that the appellant would be persecuted merely on the basis of being a minority clan member and considered that he had fabricated his claim to be at risk from family members of the person he injured in the UK as part of his criminal offending. The judge noted that the appellant had spent his formative years in Somalia and was aware of the customs, culture and language. She found that the appellant had failed to provide an adequate explanation as to why his family in the UK would not be able to assist him in terms of financial support in Somalia. She did not accept the appellant's evidence that he had no contact with his relatives in Canada and America who had previously arranged his trip to the UK from Ethiopia and she concluded that they would be able to assist with financial support. The judge also found it reasonably likely that the appellant would be able to obtain some form of employment in Somalia and that he could rely on his clan members in re-establishing himself and securing a livelihood in Mogadishu. The judge concluded that the appellant would be at no risk in Somalia, that the reasons for the previous grant of refugee status no longer existed and that the appellant's removal would not breach Article 3 of the ECHR.

8. With regard to Article 8, the judge found that the appellant could not meet the criteria in paragraph 399 on the basis of family life and that, whilst he had been lawfully resident in the UK for most of his life, he had failed to establish that he was socially and culturally integrated in the UK and had failed to establish that there would be very significant obstacles to his integration into Somalia for the purposes of paragraph 399A. The judge found that there were no very compelling circumstances outweighing the public interest in his deportation. She dismissed the appeal on all grounds.

9. The appellant sought permission to appeal that decision in relation to the judge's findings on family support from the UK and America and her findings on clan support and in relation to her approach to the question of very significant obstacles to integration. Permission to appeal was granted on 15 September 2017.

10. At the error of law hearing the Upper Tribunal, sitting as a panel, found the judge's determination to be materially flawed in regard to the findings as to financial support from the UK and America and as to clan support. The panel considered that the judge had made no finding as to the possible source of funds from the UK and was not entitled to reject the appellant's evidence that he had no contact with family in America on the basis of a statement made in 2002. The panel found the judge's findings on clan support to be inconsistent with the country guidance in MOJ. The panel accordingly set aside the judge's decision and directed that it would be re-made, at a resumed hearing, on that limited basis.

Appeal hearing and submissions

11. The appeal then came before me on 8 January 2018. The appellant adopted his statement in which he stated that his sister was unable to offer him financial support as she was in receipt of state benefits and that he had no means of support in Somalia. He confirmed that he spoke Somali. In response to my questions he said that he had worked in Somalia in his parents' shop. He had worked in the UK, but a long time ago. He worked in a warehouse doing manual work for seven to eight months. He had taken some courses in prison including English literacy, numeracy, hospitality and catering but had not managed to obtain any certificates of qualification as he was transferred to a different prison before receiving the certificates.

12. Both parties made submissions. Mr Lindsay relied on paragraph (x) of the headnote to MOJ and submitted that the appellant would be able to find work in Mogadishu. He had failed to show that he could not receive any financial assistance at all to get by initially. He had previously worked as a shopworker, he was fluent in Somali and he had worked for a short period of time in the UK and he had taken courses in English literacy, numeracy, catering and hospitality, all of which would enable him to secure a livelihood in Somalia. He was in a better position than other Somalis already living in Mogadishu. He was not at real risk of ending up in an IDP camp.

13. Mr Lee submitted that the Upper Tribunal, in the error of law hearing, had found that it was highly unrealistic to expect the appellant's sister to support him financially in

Somalia as she was a widow on benefits and barely managed to support herself. The nub of the case was therefore the appellant's ability to secure employment. It was relevant to take into account the appellant's circumstances in Mogadishu before leaving there. He had left Mogadishu over 16 years ago, at which time his property had been taken over by militia, his parents had been shot, his sisters had been raped and he had been shot. He had no family or clan ties, no prospect of remittances from abroad, he had been on benefits in the UK for a long time and it was unlikely the courses he had undertaken in prison would be transferrable to Somalia in a meaningful way to enable him to find work. The appellant could not, therefore, meet the criteria in (xii) of the headnote to MOJ. Given his lengthy absence from Mogadishu he was in the same position as someone who had never lived there before and who was being required to relocate there. Mr Lee also relied on the two reports in the appellant's objective bundle in regard to the situation in Somalia, from which it could be concluded that the appellant was likely to find himself in an IDP camp in Somalia. The appellant fell within the risk factors in MOJ and the appeal should be allowed.

Consideration and findings

14. The only challenge to the decision of the First-tier Tribunal Judge was in relation to the judge's findings on the availability of support in Mogadishu and it is on that basis only that the decision is to be re-made. I set out the relevant passages of the headnote of MOJ as follows:

“(vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.

“(viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.

“(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- *circumstances in Mogadishu before departure;*
- *length of absence from Mogadishu;*
- *family or clan associations to call upon in Mogadishu;*
- *access to financial resources;*
- *prospects of securing a livelihood, whether that be employment or self employment;*
- *availability of remittances from abroad;*
- *means of support during the time spent in the United Kingdom;*

- *why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

(x) *Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.*

(xi) *It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.*

(xii) *The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards."*

15. MOJ remains the relevant and authoritative country guidance. Mr Lee relied on various country information reports, in particular the UNHCR position paper of 23 May 2016 and the Rift Valley Institute report of 17 February 2017 in regard to the situation in Somalia. I note that the latter relates in particular to IDPs resettling in Mogadishu from other parts of Somalia. The former pre-dates the Home Office Country Information and Guidance of July 2016 relied upon by the respondent in the cessation decision. In that report, consideration was given to various other human rights reports with a conclusion at section 2.3.21 that the situation had continued to improve since 2014 and that there was no reason to depart from the existing country guidance. I do not find any evidence produced by the appellant to provide any justification for departing from the guidance in MOJ. Accordingly I have considered the risk on return to the appellant in line with the assessments made in MOJ.

16. It is the appellant's case that he falls within (xii) as being in the same position as someone who was relocating to Mogadishu from another part of the country and a person with no clan or family support, with no remittances from abroad and no real prospect of securing access to a livelihood, such that he would be forced to live in an IDP camp in breach of Article 3. However I do not agree that he should be considered on the same basis as a person who has never lived in Mogadishu. The relevant considerations are therefore those in paragraphs (ix) to (xi) of the headnote to MOJ. This is not the case of a person who left Somalia as a child but the appellant departed in 2001 as a 27 year old man who was born and grew up in Mogadishu and whose parents were born there. He would without any doubt have retained ties in terms of familiarity, culture and language, as well as ties based on his clan, as detailed at [9] and [10] of the cessation decision, even considering the

limited nature of the support that could be offered from a minority clan and even if he no longer had a home in that city. It is also highly unlikely, having spent the majority of his life in Mogadishu, and despite the situation in that city, the circumstances leading to his departure and his 16 year absence, that he would not retain any social ties and would find himself without any support, at least for a minimal period of time until he could find employment. I accept, from the error of law decision, that no reliance could be placed upon financial support from the appellant's sister in the UK or relatives in Canada/America, but I do not consider the evidence to demonstrate that the appellant would return to Somalia and remain there completely empty-handed without resources to accommodate and feed himself until he could find work.

17. As Mr Lee submitted, the crux of the appellant's case and the most significant aspect of the risk assessment is indeed the appellant's ability to secure a livelihood for himself in Mogadishu as a means of support. As (x) makes clear, the burden of proof lies upon the appellant to show that he would not be able to access economic opportunities, or indeed other means of support, in Mogadishu. Whilst the appellant's unchallenged evidence is that he spent most of his time in the UK reliant upon public benefits, it is the case that he has worked for a limited period of time as a manual worker in a warehouse and has undertaken courses in literacy and numeracy, catering and hospitality, and he speaks English. He has also worked in Mogadishu in his family's shop. He is a fit and healthy man. Although he may not be highly skilled or educated, there is no basis upon which to conclude that he would be unable to find some form of unskilled work in Mogadishu. Paragraphs [344] to [352] of MOJ provide details of the opportunities available to returnees as a result of the economic boom, referring to opportunities in unskilled work such as building labour, and emphasising at [351] the advantages for returnees from the West in seeking employment. There is nothing in the evidence provided in MOJ in these paragraphs or the preceding paragraphs dealing with the significance of clan membership to support the appellant's claim that he would have difficulty finding employment.

18. Accordingly, it seems to me that the appellant has failed to demonstrate that he would not be able to establish himself in Mogadishu and secure a livelihood for himself, irrespective of a lack of financial support from family or clan members. The evidence does not suggest that the appellant would find himself in an IDP camp and there is therefore no basis for concluding that his deportation would breach Article 3 of the ECHR.

19. As for Article 8, it was not argued before me that there was a separate case to be made for concluding that there would be 'very significant obstacles to integration' in Somalia, or that the appellant had demonstrated very compelling circumstances over and above those in paragraph 399A and, for the reasons I have given above in relation to Article 3, I find that there are none. As I have already found, the appellant spent his formative years in Somalia and, whilst returning after a lengthy absence would no doubt present its difficulties, he would be at no risk on return to that country and would be able to re-establish himself there. I do not find that he is able to meet any of the exceptions to automatic deportation.

DECISION

20. The making of the decision of the First-tier Tribunal involved an error on a point of law in relation to its findings on Article 3, and the decision has accordingly been set aside in that respect. I re-make the decision by dismissing the appellant's appeal on Article 3 grounds, as well as on Article 8 grounds and on all other grounds.

Signed 

Dated: 10 January 2018

Upper Tribunal Judge Kebede