



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11824/2019

THE IMMIGRATION ACTS

Heard remotely via video (Skype for Business)
On 24 August 2020

Decision & Reasons Promulgated
On 02 September 2020

Before

UPPER TRIBUNAL JUDGE BLUM

Between

AHA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms K Reid, Counsel, instructed by Sentinel Solicitors
For the respondent: Mr E Tufan Senior Home Office Presenting Officer

This decision follows a remote hearing in respect of which there has not objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal R Oliver (the judge) who, in a decision promulgated on 11 February 2020, dismissed the appeal of AHA (appellant) against the decision of the Secretary of State for the Home Department (respondent) dated 20 November 2019 refusing his asylum and human rights claim and his claim for Humanitarian Protection (HP).

Background

2. The appellant is a national of Somalia. He was aged 28 at the date of the judge's decision. He was born and lived in Mogadishu and is a member of the Reer Faqi tribe, a subgroup of the Reer Hamar minority clan. According to the information he gave in his screening interviews (both on 30 July 2018) and in his substantive asylum interview (24 May 2019) he is married and his wife and parents were in Somalia, as were some of his siblings. The appellant subsequently claimed that his wife left Somalia on 2 October 2019, that one of his brothers died in a bomb explosion near the Mogadishu airport, that his father died on hearing this news, and that his mother and siblings had now all left Somalia. In his screening interviews the appellant claimed to have worked in an Internet cafe in Mogadishu and he later claimed in his statement dated 19 December 2019 that he also repaired computers in the same premises. The appellant claimed that he would be subjected to persecution in Somalia on account of having no family or other support, his membership of a minority clan, and because he would be targeted by Al-Shabaab on account of his familial relationship with his uncle, a government employee who was killed by Al-Shabaab in December 2018, and because Al-Shabaab wanted to utilise the appellant's skills at repairing computers.

The decision of the First-tier Tribunal

3. The judge heard oral evidence from the appellant and from the appellant's maternal aunt, MH. At [24] the judge rejected the appellant's claim that his wife had left Mogadishu. The judge noted that the appellant's story had "developed" since he first applied for asylum to the extent that he now claimed to have no family at all in Somalia. The judge noted that the appellant had been inconsistent in his initial claim to fear persecution at the hands of Al-Shabaab. The judge queried how the appellant's wife could afford to fly to the UK given the claimed lack of family resources, and he noted that the appellant had not sought any assistance from the Somali community to try to trace her. At [22] the judge noted that the appellant's maternal aunt had not asked the appellant's mother where the appellant's wife was when they were in contact with each other. The judge did not accept that the appellant's wife had left Somalia.
4. At [25] the judge rejected the appellant's claim to fear Al-Shabaab as he himself had not been a government employee and was only a nephew of the

government employee, and because the appellant's belief that Al-Shabaab wanted to use his computer skills was "entirely speculative".

5. At [26] the judge was not satisfied that the appellant had established that he had no family members still living in Mogadishu because he gave no evidence of any attempt to contact other family members for potential up-to-date information, or any attempt to contact them via the Somali community. At [27] the judge was not satisfied that the appellant would be entitled to Humanitarian Protection under article 15(c) of the Qualification Directive (2004/83/EC) because he was a fit young man who had computer skills.
6. The judge dismissed the appeal.

The challenge to the judge's decision

7. The Grounds of Appeal, amplified by Ms Reid in her oral submissions, contend that the judge failed to apply guidance in **MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)** (the 1st ground), and the judge failed to give reasons for not accepting the appellant's evidence that he had no family in Somalia (the 2nd ground). In respect of the 1st ground, the judge failed to apply the considerations contained at paragraphs 407 and 408 of **MOJ**, and in particular, the length of the appellant's absence Mogadishu, his membership of a minority clan, and that he has no financial resources of his own and that remittances from the UK was not an option (something in respect of which the judge made no particular findings).
8. In respect of the 2nd ground, whilst the judge rehearsed the appellant's evidence in respect of his claim that his wife had left Somalia at [24], the judge failed to actually give any reasons for rejecting this evidence. There was said to be no link by the judge between his recitation of evidence and his observations concerning the Somali community and his rejection of the appellant's claim concerning his wife's location.

Discussion

9. It is appropriate to consider the 2nd ground of challenge first. At the outset of [24] the judge noted that the appellant had, at least initially, been inconsistent in his claim regarding Al-Shabaab. In his first screening interview the appellant claimed that his brother had been involved with Al-Shabaab and was killed when he "blew himself up". Al-Shabaab asked the appellant to take his brother's place. In his second screening interview the appellant admitted that neither he nor his brother had any involvement with Al-Shabaab. Whilst the judge did not draw an adverse inference based on the appellant pretending to faint at the airport after he arrived in the UK, the judge did find that the appellant's initial misrepresentation undermined his general credibility. The judge was unarguably entitled to so conclude. It was in this context that the

judge considered the evidence relating to the appellant's wife. Whilst I accept that the appellant did not give any inconsistent evidence in respect of his wife, his initial decision to fabricate his reasons for fleeing Somalia was a relevant factor to consider 'in the round' when determining whether the appellant had discharged the lower standard of proof in respect of his account of his wife's location. It is readily apparent from a holistic reading of [24] that the judge did take into account this inconsistency when assessing the appellant's evidence relating to his wife's location.

10. The judge then commented that it was unclear how the appellant's wife would join him in the UK, as he claimed she would in his screening interview, given his claim to have no family resources. This was a point rationally open to the judge and which, in the context of [24], informed his assessment of the appellant's evidence relating to his wife. The judge then noted that the appellant had not attempted to locate his wife with the assistance of the Somali community which had the means of discovering information. Although Ms Reid submitted that there was no connection link between this assertion and the judge's finding that the appellant's wife was still in Mogadishu, I am satisfied, reading the paragraph as a whole, that the judge was drawing an adverse inference based on the appellant's failure to utilise the Somali community networks to try to locate his wife. It is irresistibly implicit in the judge's reference to the failure by the appellant to utilise the Somali community to try to trace his wife that the judge doubted the appellant's claim that his wife left the country. This must also be considered in the context that the appellant's aunt has not asked the appellant's mother if she knew of the location of the appellant's wife [22]. Drawing these strands together, I am satisfied the judge gave legally adequate reasons for concluding at [24] that the appellant failed to discharge the burden of proving that his wife left Somalia.
11. I now consider the 1st ground of appeal. At paragraph 12 of her renewed grounds Ms Reid submits that the judge failed to consider the factors identified in paragraph 425 of **MOJ**, although in her written submissions and at the remote hearing she relied on the factors in paragraph 407 of **MOJ**. Paragraph 407 is more relevant as paragraph 425 relates to a person relocating to Mogadishu; as the appellant hails from Mogadishu, he would not be someone relocating to the city. Ms Reid emphasised that the judge failed to consider, in particular, the appellant's absence from Mogadishu, the issue of whether he had his own financial resources and the possibility of remittances of funds from the UK, and his membership of a minority clan.
12. Although the judge did not make express reference to the length of the appellant's absence from Mogadishu, it is clear from the determination, read as a whole (e.g. [12], [13]) that he was aware of the appellant's immigration history. It is not likely, in these circumstances, that the judge would have ignored the length of the appellant's absence from Mogadishu. The appellant has, in any event, been absent from the city for a relatively short period of time

(just over 2 years if he left at the end of 2017) and it is not likely that there would have been any material change in the appellant's knowledge and understanding of the city in that short space of time. It is also apparent from the decision, read as a whole, that the judge was aware that the appellant was a member of a minority clan, but that he had not experienced any violence or discrimination as a result [13]. Although **MOJ** indicated that minority clans may have little to offer their members, it found that members of minority clans suffered no clan violence and no clan discriminatory treatment (at paragraph 407(f) & (g)). It is not arguable, reading the decision as a whole, that the judge failed to take into account the appellant's membership of a minority clan with respect to the factors in paragraph 407.

13. The grounds contend that the judge's assertion that the appellant has computer skills is not a finding that he would be able to secure an income. This assertion does not however accurately reflect the appellant's own evidence. In his screening interview the appellant claimed to have worked in a café in Mogadishu, which he confirmed as an Internet café in his substantive interview, which was owned by a friend. In his statement the appellant explained that he used his computer skills to fix people's computers in the Internet café, which doubled as a workshop. It is apparent from this evidence that the appellant had worked in Mogadishu earning money from his 'computer skills'. The judge had made specific reference to the appellant's statement and his evidence that he repaired computers [19]. Although it may have been preferable at [27] for the judge to have made express reference to the appellant having earned money from repairing computers using his 'computer skills', I am entirely satisfied that the judge had in mind the totality of the appellant's evidence when referring to 'computer skills' and that the judge did link this evidence with the factors at paragraph 407 of **MOJ**, and in particular, the appellant's prospects of securing a livelihood. No challenge has been made to the judge's rejection of the appellant's claim that he would be targeted by Al-Shabaab as a result of his computer skills and the judge was unarguably entitled to find this assertion to be entirely speculative.
14. The judge's assessment of the factors in paragraph 407 must also be considered in the context of his finding, which I found was lawfully open to him for the reasons set out above, that the appellant's wife remained in Mogadishu and that he therefore did have family or a close relative in the city who could assist him. The judge's findings, when considered as a whole, do indicate that he applied the factors in paragraph 407 of **MOJ** and were sufficient to entitle him to conclude that the appellant did not qualify for Humanitarian Protection if returned to Mogadishu.

Notice of Decision

The First-tier Tribunal's decision did not involve the making of an error on a point of law requiring the decision to be set aside.

The appeal is dismissed.

Signed *D. Blum*

Upper Tribunal Judge Blum

Date 1st September 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email