



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003430

First-tier Tribunal Nos: PA/56001/2021
IA/00263/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR NJI
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Yaqoob (Solicitor)

For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 15th June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

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

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Hollings-Tennant, promulgated on 22nd June 2022, following a hearing in Manchester on 14th June 2022. In the determination, the judge dismissed the appeal of the Appellant. The Appellant applied for, and was granted permission to appeal to the Upper Tribunal and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Somalia. He was born on 1st August 1995, and he appeals against a refusal of asylum in the Respondent's decision of 13th October 2017. It is a feature of this appeal that there was a previous decision by a First-tier Tribunal on 13th April 2018 against the Appellant.

The Appellant's Claim

3. The essence of the Appellant's claim is that he belongs to the Rahanweyn tribe of the Wanjeel clan, which is a minority clan in Somalia, as contended for by himself. He lived with his parents, uncle, siblings and his wife in a rural village. In 2004 his father was killed by the tribal militia. This happened after his father tried to prevent them from kidnapping the Appellant's sister who had subsequently been raped. His sister fled the country after this incident. The Appellant also claims that Al Shabaab has influence in the area and would come to recruit young men to fight for them. They had attacked the village in 2009 and they had taken control of the village at the time. The Appellant claims to have fled to a nearby village but his mother had stayed behind with his siblings.

The Judge's Findings

4. The judge did not find the Appellant to be a credible witness. He had not provided special evidence to depart from the previous decision of Judge Pickup. The judge also found that the Appellant would not face a real risk of persecution on return to Mogadishu. Neither the general security situation prevailing there nor the Appellant's personal characteristics would raise the prospect of a sufficient risk. The Appellant, the judge held, could turn to his extended family members for support. There were also members of his clan he could turn to for assistance. There were no substantial grounds to conclude that the Appellant would be unable to obtain work or that he could not access appropriate treatment for his mental health issues. That being so, internal relocation would not be unreasonable or unduly harsh for this Appellant who had not made out his case that he would be forced to resort to an IDP camp were he required to return, such that it would undermine his Article 3 rights under the ECHR.

Grounds of Application

5. The grounds of application state that the judge had erred in law by failing to take a holistic approach to the evidence which suggested that internal relocation would not be a viable option available to the Appellant.

The Grant of Permission

6. Permission to appeal was granted by the First-tier Tribunal on 14th July 2022 on the basis that it was arguable that the judge had failed to take account of the

Appellant's mental health problems in his assessment of internal relocation. At paragraph 40 of the determination the judge had identified limitations in the medical letter before him in the context of his Article 3 ECHR deliberations. However, the judge had accepted the diagnosis. Therefore, it was arguable that the judge did not consider this in his assessment of internal relocation because no mention is made there about these considerations.

Submissions

7. In his submissions before me on 15th June 2023, Mr Yaqoob, appearing for the Appellant, submitted that the fact that there was a previous decision against the Appellant was only a starting point because the more recent case of **BK (Afghanistan) [2019] EWCA Civ 1358** emphasised that the principle in **Devaseelan** was rooted in the concept of fairness. That being so, the second judge was not bound to follow the previous decision but to take it into account. The Appellant's version of events was supported by the expert report of 16th March 2021 by Dr Markus Hoehne. The expert had held that the Appellant's account was plausible and the concerns raised by the Respondent were expressly rejected by him. The Appellant was a member of a minority clan. He was vulnerable. This was explained by the expert. As a member of the minority clan the Appellant would have no power in Somalia and he would be at risk upon return due to his clan membership.
8. Furthermore, he had been targeted in the past by Al Shabaab. He was forced to flee on more than one occasion. The expert had explored the presence of the risk of persecution to the Appellant in his report. Importantly also, the Appellant's mental health issues had been covered in the medical evidence provided by his GP, of which there were two letters. The country guidance case of **OA (Somalia) [2022] UKUT 00033** in its headnote favoured the Appellant in some respects when it stated that there is "some mental health provision in Mogadishu" but this clearly highlighted the inadequacy of proper mental health care, a matter that was expanded upon by the expert report in the Appellant's case. There is stigma attached to mental health patients in Somalia that the Appellant would not be able to escape. Mr Yaqoob then took me to the expert report and laid emphasis on paragraph 26 which emphasised the risk from Al Shabaab to civilians.
9. For his part, Mr Tan had two main submissions to make. First, that the judge had indeed taken a holistic approach to the evidence before him as contended for by Mr Yaqoob. This is clear from what the judge states at paragraphs 18 to 19. He makes it clear that he has "taken into account all the evidence submitted" (at paragraph 18). He makes it clear that he has taken full account of the guidance in **KB & AH (credibility-structured approach : Pakistan) [2017] UKUT 491**, which indicated such a sufficiency of detail, internal consistency, external consistency and plausibility, provide a helpful framework within which to conduct a credibility assessment (at paragraph 19).
10. Second, with respect to the risk on return, the judge considered the situation holistically (from paragraphs 29 to 30) before concluding that the Appellant would not be at risk (at paragraph 32). He "carefully considered all the evidence presented in the round" and did so "to the lower standard of proof" before concluding that there was "insufficient evidence before me to depart from the previous findings made by Judge Pickup" (paragraph 29). He did consider the "additional documents now adduced" but concluded that these only "give rise to

further inconsistencies” because the Appellant’s evidence continued “to be somewhat vague and lacking in detail”.

11. Regard was further had to Dr Hoehne’s expert opinion with regard to the Appellant’s clan membership, but the judge concluded that “the Appellant has not been entirely truthful about the circumstances that gave rise to him fleeing Somalia”, especially in that the judge was not persuaded that the Appellant’s “family would have been able to raise funds for his journey to the United Kingdom if they were indeed from a minority clan, had experienced the difficulties as the Appellant has described, and were unable to turn to extended family members ...” (at paragraph 29). The judge also noted that the Appellant had not been able to provide sufficient evidence to demonstrate that he had been individually targeted by Al Shabaab or that he could not return to be with extended family members or seek wider clan members for support (at paragraph 30).
12. The judge then concluded that despite the fact that, “Dr Hoehne states there is evidence to indicate that the influence of Al Shabaab has increased in recent years” (at paragraph 32), his report is dated 16th March 2021 and he had only considered the “security situation until early 2021”. The reality was that the latest country guidance case from the Tribunal of **OA (Somalia) [2022] UKUT 33**, “the Tribunal considered more recent country information up to May 2021 before concluding that the guidance” earlier given remained applicable. The Appellant had not provided any additional country information as to the situation in Mogadishu. Although the situation remained volatile in relation to the presence of Al Shabaab, the Appellant had provided “no strong grounds supported by cogent evidence” to depart from the earlier country guidance case of **MOJ & Ors (Return to Mogadishu) Somalia [2014] UKUT 442**.
13. As to the Appellant’s mental health condition, the judge had considered this in detail as well. There had been submissions by the Respondent that sufficient treatment was available in Mogadishu (see paragraph 41). The Respondent had expressly referred to “Response to an information request: Somalia: Mental healthcare in Mogadishu”, dated 16th June 2021, “which refers to several healthcare facilities providing mental health services and access to medication, including anti-depressants and anti-psychotics” (paragraph 41). Indeed, although Dr Hoehne had said that healthcare was very basic in Somalia, the judge’s conclusion was that, “there is insufficient evidence before me to suggest that the Appellant would be unable to access any treatment he may require” (paragraph 41).
14. In reply, Mr Yaqoob submitted that the judge had failed to take into account the Appellant’s GP’s letters (at pages 185 to 186), whereby the latest of these two letters, dated 25th March 2021, suggested that the Appellant’s mental health situation required proper treatment. Mr Tan responded immediately with the statement that these two letters from the GP had also been taken into account and the judge had made it clear that anti-depressants were available in Somalia and would provide for the Appellant’s situation.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that I should set aside the decision. My reasons are that it is plain from the way in which Mr Tan has explained the

manner in which the judge below has reached his decision, that all matters raised by the Appellant, were considered by the judge in a holistic fashion, and not least the Appellant's mental health situation.

16. The judge was clear that despite the evidence eluded to now by the Appellant's representative, "there is no detailed medical report before me and it is not clear the extent to which the uncertainty about his future is a contributory factor in the state of his mental health" (paragraph 40). The judge had found the Appellant's account not to be a credible one. Moreover, the Appellant had not been referred for any other treatment in respect of his mental health (paragraph 40).
17. When these matters are taken into account alongside the fact that there are, as the judge found, several healthcare facilities that provide for mental health services in Mogadishu, with access to medication, including anti-depressants and anti-psychotics, it is clear that the judge was entitled to come to the decision that it was. There is no error of law.
18. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30th December 2023