



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02137/2013

THE IMMIGRATION ACTS

Heard at Field House
On 30 September 2014

Determination Promulgated
On 3 October 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Claimant

And

MR M A B
(Anonymity Direction Made)

Respondent

Representation:

For the Claimant: Mr S Walker a Senior Home Office Presenting Officer
For the Respondent: Mr P Collins of counsel instructed by Caulker & Co

DETERMINATION AND REASONS

1. The claimant is the Secretary of State for the Home Department ("the Secretary of State"). The respondent is a citizen of Somalia who was born on 1 January 1989 ("the claimant"). The Secretary of State has been given permission to appeal the determination of a panel consisting of First-Tier Tribunal Judge B Lloyd and non-legal member Mrs F T Jamieson JP ("the panel") who allowed on humanitarian protection grounds only the claimant's appeal against the Secretary of State's decision of 3 October 13 to make a deportation order against him under the provisions of section 32 (5) of the UK Borders Act 2007.

On the same date the Secretary of State refused to grant the claimant asylum and refused to revoke the deportation order.

2. The claimant came to the UK in about May 2001 when he was 12 years old. He joined his mother who made an asylum claim with him as her dependent. The claim was refused on 19 June 2001. However, it was reconsidered and on 24 October 2001 both the claimant and his mother were granted exceptional leave to remain in the UK valid until 24 October 2005.
3. On 19 September 2005 when the claimant was 16 his mother applied for indefinite leave to remain which was granted to both of them on 29 December 2005.
4. The claimant had no criminal convictions until 2 May 2012 when he was 23. At Woolwich Crown Court he was convicted of common assault. He was ordered to do 80 hours community service and pay £100 compensation. Subsequently, the penalty was varied and replaced by two weeks imprisonment.
5. On 12 November 2012 the claimant was convicted at Woolwich Crown Court on three counts of supplying a Class A controlled drug namely crack cocaine on 24 July 2012 and two further counts of possessing a Class A controlled drug, also crack cocaine, with intent to supply on the same date. The claimant was sentenced to 3 years imprisonment concurrently on each count and the varied order of two weeks imprisonment imposed at the same court on 20 February 2013 was ordered to be served consecutively.
6. The claimant appealed against the Secretary of State's decisions arguing that these were not in accordance with the Immigration Rules, not in accordance with the law, that her discretion had been wrongly exercised and that the decisions breached the U.K.'s obligations under Articles 2, 3 and 8.
7. The panel heard the appeal on 21 July 2014. Both parties were represented and the claimant gave evidence. The panel concluded that on the particular facts of the claimant's case paragraph 399A of the Immigration Rules did not apply and he had not shown that there were exceptional circumstances such that the public interest in deportation was outweighed by other factors. He had not shown exceptional circumstances in relation to his private and family life. His removal to Somalia would not be a breach of his Article 8 human rights. There were no grounds to revoke the deportation order. However, in relation to his claim for humanitarian protection under Article 15(c) of the Qualification Directive, in the light of the country guidance in AMM and others (Somalia) [2011] UKUT 00445 and on the evidence before the panel he had established that he came within the category of civilians at real risk of random death or injury from indiscriminate violence. The appeal against the deportation order was allowed but only to this extent.
8. The claimant has not sought to appeal against the panel's conclusions that he was not entitled to succeed on any grounds other than humanitarian

protection. The Secretary of State applied for and was granted permission to appeal arguing that the panel erred in law by failing to provide adequate reasons why the claimant would be at risk of indiscriminate violence on return to Somalia. There had been a failure to make an assessment of what ties he had in Somalia, in particular what clan ties he might have and whether he had any family support in the light of his evidence that he had half siblings there. He had spent his youth and formative years in Somalia, would be familiar with the culture and customs and could re-establish himself without being at risk of indiscriminate violence.

9. Mr Walker relied on the grounds of appeal. There had been no assessment of whether the claimant had any cultural or other ties in Somalia. Whilst he had denied having any half siblings this had been his evidence at one point. The evidence indicated that both he and his mother had lived in Mogadishu. It was the Secretary of State's case that he would be returned to Mogadishu. He was likely to have had contacts with the Somali community in the UK. The level of education he had obtained in the UK would assist him on his return.
10. In reply to my question as to whether the Secretary of State was suggesting that her grounds including any argument that the situation in Somalia and in particular Mogadishu had changed since AMM to such an extent that he would no longer be at risk of indiscriminate violence Mr Walker went no further than to say that the situation had moved on since then.
11. Mr Collins referred me to the panel's quotation from AMM in paragraph 21. There were only a small number of people who might avoid indiscriminate violence if they were "connected with powerful actors or belonging to a category of middle class or professional persons who can live to a reasonable standard in circumstances where the Article 15 risk, which exists for the great majority of the population, does not apply". He referred me to the head note and to paragraphs 350 and 351 of AMM. He submitted that the claimant did not come within any part of this exempt category. He was not within a professional class and the question of whether he had retained cultural ties through contact with the Somali community in the UK was irrelevant. He came here when he was 12 and was now 26. The Secretary of State had not argued that he came within any other exclusion category.
12. Mr Collins said that the claimant had instructed him that he did have half siblings. They were the older children of his mother by a previous marriage. There was no concession as to their present whereabouts. Mr Collins submitted that the presence or absence of such half siblings was not relevant to the question of whether the claimant would face indiscriminate violence.
13. Mr Collins argued that on the material before the panel there was no error of law in the assessment of the post AMM country evidence. If there had been such change it would have to be shown that it was "well-established and durable". There was no need for the panel to consider the claimant's family circumstances in Mogadishu which was irrelevant to the question of whether

he was at risk of indiscriminate violence and as a result entitled to humanitarian protection. The Secretary of State did not appear to challenge the panel's findings in paragraph 56. I was asked to find that the panel had not erred in law and to refuse the Secretary of State's appeal.

14. Mr Walker did not reply except to refer me to paragraph 1.2.57 of the Home Office Country Information and Guidance on Somalia which was before the panel. I reserved my determination.
15. I find that the panel did make a proper assessment of what ties the claimant had to Somalia. There is reference to his evidence about this in paragraph 27. He had been living with his mother in the UK but had lost contact with her. He had never really known his father and assumed from what his mother told him that his father had been killed. I do not find any inconsistency in his evidence about whether he had half siblings in Somalia. At the hearing before me Mr Collins said, on instructions, that the claimant had half siblings born to his mother by an earlier marriage. This is not inconsistent with his evidence referred to in the determination where he denied having half siblings who continued to reside in the country (my emphasis). At the date of the deportation order he had lived here for 12 years and four months which had increased to more than 13 years by the time of the hearing before the panel. His evidence was that he had completely lost touch with Somalia. He said that he had no means of support there and no social or family network upon which he could rely. I find that the panel accepted this evidence in the conclusions summarised in paragraph 54 when it was said in relation to his return to Mogadishu that it would be to; "a country to which he now in our view has little or no cultural or personal connection at all. Neither has he any familiarity with an environment permeated with extreme danger for him as part of the civilian population." The panel's conclusion did include a proper assessment of whether the claimant had any family support in Somalia.
16. In the light of the findings which the panel were entitled to make I am not persuaded that the presence or absence of any finding as to whether the claimant was Ashraf was of any relevance except possibly to make his position worse. If he was Ashraf he would be a member of a minority clan with the possible additional dangers that that would entail. If he was not then it would not help to determine whether he was within one of those limited classes of individuals not at risk identified in AMM.
17. I note that at the hearing before the panel the Presenting Officer did not argue that the claimant came within the exception categories identified in AMM. Whilst Mr Howells now seeks to argue that he does, I am not persuaded that the evidence indicated that the claimant came anywhere near being "connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard". I find no merit in the argument that any education he has received in the UK could put him in the category of a professional person. I have not been referred to any evidence as to the extent of his education or qualifications. Similarly, I am not

persuaded that any contacts he may have with the Somali community in the UK would assist him to any material degree were he to return to Somalia. Again I have not been referred to any evidence as to the nature or extent of any contacts may have with the Somali community in the UK.

18. The grounds of appeal do not argue that country conditions have changed to the extent that the assessment of risk of indiscriminate violence set out in AMM should no longer be followed. This was touched on in submissions and I find that the panel did not err in law. The submissions of the parties are set out between paragraphs 39 to 47 of the determination and on those arguments and the evidence referred to, it was open to the panel to conclude that there was no reason why they should depart from the guidance set out in AMM. As Mr Collins submits the panel would have needed to find that there had been well-established and durable changes in order to come to a different conclusion.
19. The panel made an anonymity direction. I direct that this should continue in force.
20. I find that the panel did not err in law and I uphold the determination to allow the claimant's appeal on humanitarian protection grounds only.

.....
Signed
Upper Tribunal Judge Moulden

Date 1 October 2014