



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: AA/02963/2014**

THE IMMIGRATION ACTS

**Heard at Manchester
On April 7, 2015**

**Decision & Reasons Promulgated
On April 17, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR ABDIRAHMAN ABDI IBRAHIM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mrs Johnrose (Legal Representative)

Respondent

Ms Johnstone (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia who arrived in the United Kingdom on February 22, 2014 and claimed asylum on February 24, 2014. The respondent refused his application for asylum under paragraph 336 HC 395 on April 9, 2014 and also took a decision to remove him as an illegal entrant by way of directions under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.

2. The appellant appealed that decision on April 30, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. The matter came before Judge of the First-tier Tribunal Brookfield on May 28, 2014 and in a decision promulgated on June 4, 2014 she refused the appellant's appeal. The appellant appealed that decision and eventually the matter came before Judge of the First-tier Tribunal Birrell (hereinafter referred to as the "FtTJ") on September 26, 2014. In a determination promulgated on October 6, 2014 she found there had been an error in law and she remitted the matter back to the First-tier tribunal and she heard the appellant's full appeal de novo in the First-tier Tribunal on January 6, 2015. She refused the appeal.
4. The appellant lodged grounds of appeal on January 30, 2015 submitting the FtTJ had erred by:
 - a. Departing from the country guidance case of MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC).
 - b. Failing to make clear findings on the effect of the respondent's concession.
 - c. Failure to consider all of the evidence relating to the appellant's involvement with the Somali government.
 - d. Failure to consider risk within the scope of HJ (Iran) v SSHD [2010] UKSC 31.
 - e. Failure to put alleged discrepancies to the appellant.
5. On February 10, 2015 Judge of the First-tier Tribunal Parkes gave permission to appeal finding the FtTJ may have erred in her approach to the respondent's concession and future risk to the appellant.
6. The matter came before me on the above date and the parties were represented as set out above. The appellant was in attendance.

ERROR OF LAW SUBMISSIONS

7. Mrs Johnrose adopted the grounds of appeal and submitted:
 - a. The FtTJ had materially erred in her approach to the concession contained in the refusal letter. When finding an error of law the FtTJ stated the judge was not bound to accept the conclusion that Al Shabaab would be interested in people who showed allegiance to the Somali government but any departure from that concession would require an explanation. Similarly, the same was argued in respect of the concession that employees may face persecution from Al Shabaab. The FtTJ failed to explain why she departed from the concession and in particular failed to consider whether as an employee this demonstrated allegiance to the Somali government.

- b. The FtTJ had materially erred because she found the appellant was an employee of the Somali government and this meant he fell within one of the risk categories set out in MOJ. There was evidence, other than Facebook that demonstrated he was connected to the government and therefore at risk of persecution. He was not an ordinary citizen and was at risk of persecution and the FtTJ erred in her approach to his case.
 - c. The FtTJ failed to have regard to the evidence contained at pages 19-22, 25-26, 33 and 36 of the appellant's bundle. This evidence was not challenged and undermined the FtTJ's finding at paragraph [38] that "there was nothing to link him with the government other than a Facebook page...."
 - d. The FtTJ failed to consider that the appellant would be forced to lie to hide his past activities and this breached the doctrine set out in HJ.
 - e. The FtTJ should have put her concerns, expressed in paragraph [30] to the appellant during the hearing.
8. Ms Johnstone relied on the rule 24 letter dated February 20, 2015. She submitted:
- a. The FtTJ had had regard to the concession contain in the refusal letter. The concession did not mean every employee would be at risk and she found in paragraph [37] of her determination that the appellant had embellished his importance and found he would not be at risk because of his brief employment in Mozambique. The FtTJ also rejected his claim that he had either experienced problems prior to leaving Somalia or he had lived with the Ambassador on his return. The FtTJ considered the appellant's claim in line with the concession statement and she was satisfied he did not come within either concession.
 - b. The appellant did not come within the any of the risk categories identified in MOJ and the FtTJ concluded in paragraph [40] of her determination that the appellant could live safely in Mogadishu, in line with the findings in MOJ.
 - c. Although the appellant produced some additional material over and above the Facebook entry there was no evidence that evidence on the internet was either locatable or would lead to him being targeted and in any event the FtTJ accepted he had been employed.
 - d. There was no evidence that upon return the appellant would be questioned and be required to disclose that he worked for the government in 2012 or come within paragraph [82] of HJ.
 - e. The FtTJ considered the evidence and the appellant's solicitor's letter. She made findings open to her about his claimed difficulties with Al Shabaab. The appellant was aware of those discrepancies and

addressed them as best he could but the FtTJ was entitled to make the findings he did on the evidence.

9. Mrs Johnrose responded to these submissions and questions posed by Ms Johnson and myself as follows:
 - a. The appellant fell within the category of persons covered in MOJ and neither the FtTJ nor the respondent considered the fact he was associated with the Somali government. The fact he worked in Mozambique did not mean he was not covered by the MOJ decision or concession. The FtTJ failed to make a finding on whether working for the government showed an allegiance to the government.
 - b. The FtTJ's findings in paragraph [40] referred to internally displaced persons as against failed asylum seekers.
 - c. The appellant has an immutable character and the FtTJ should have considered his case in light of HJ. If he has to lie about his history or hide the fact he worked for the Somali government and applied for asylum then he is covered by HJ.
10. Having heard the submissions I reserved my decision.

ANALYSIS AND FINDINGS

11. The appellant's case came before me following the granting of permission by Judge of the First-tier Tribunal Parkes. In granting permission the judge found:

"The acceptance that the appellant had worked for the Embassy, albeit that this position was abroad and not in Somalia, raises concerns about the Judge's approach to the concession that the Secretary of State and the future risk to the Appellant. On that basis the grounds are arguable and permission to appeal is granted."
12. Mrs Johnrose argued a number of points (as set out above) but in particular she argued that the FtTJ erred in her approach to the concession contained in the refusal letter and in applying the country guidance decision of MOJ.
13. The FtTJ had concluded at paragraph [36] of her determination that it was reasonably likely the appellant worked as a secretary for diplomats who were trying to establish an Embassy in Mozambique between January and August 2012. The FtTJ made this finding after taking into account paragraph [13] of the appellant's witness statement (dated May 21, 2014) and Farah Samatar's letter of support and oral evidence.
14. Mrs Johnrose submitted that this finding meant the appellant was not an "ordinary citizen" and this fact was recognised by the respondent in her refusal letter at paragraph 2(c) when the author of the refusal letter wrote:

"In light of the information above it is accepted that Al Shabaab would be interested in people who showed allegiance to the Somali government and

that employees of the Somali government may face treatment at the hands of Al Shabaab that would amount to persecution on account of imputed political opinion.”

15. Between paragraphs [397] and [425] of MOJ the Tribunal provided guidance on how to approach cases involving applicants from Somalia with particular reference to the risk posed by Al Shabaab and in addition to considering whether a person is an “ordinary citizen” it was necessary to carry out a careful assessment of the person’s overall circumstances.
16. In her first determination the FtTJ noted at paragraph [13] that the appellant worked for a member of the Somali government and that the respondent conceded that an employee of the Somali government was at risk. She went on to find that whilst the judge had not been bound to accept that latter statement but if she rejected it then she should have given reasons for departing from that concession. She remitted the matter back to the First-tier and in her subsequent decision she acknowledged the respondent’s concession in paragraph [18] of her determination and then having set out the facts and case law she rejected his earlier claims of problems with Al Shabaab but accepted his claim to have worked as a secretary for diplomats in Mozambique as claimed but she then found he embellished his claim concerning what he did after he returned to Somalia. The FtTJ went on to reject his claim that Al Shabaab came looking for him or that he lived with the Ambassador in Somalia.
17. At paragraph [39] of her determination she concluded the appellant could return to Mogadishu because it was only targeted individuals that were at risk and that he was not someone who was or would be of interest to Al Shabaab despite the fact she accepted he worked for the government for a brief period.
18. I have considered the FtTJ’s approach in light of the respondent’s concession. The decision of MOJ and the submissions of the two representatives.
19. Dealing with the respondent’s concession I am satisfied that this did not mean that every employee was at risk of persecution. He worked for the government as a secretary in Mozambique for no more than eight months and the concession did not mean that every employee faced a risk. The first part of the concession refers to the fact that the respondent accepted that Al Shabaab would be interested in people who showed allegiance to the Somali government and the FtTJ had to consider whether the appellant’s role engaged that concession. Clearly, the FtTJ did not reach that conclusion for the reasons set out in paragraph [39] of her determination. Whilst she did not state he was not a person who Al Shabaab may believe had shown allegiance to the Somali government I am satisfied that her findings can be interpreted that way. She was entitled to find he was not at risk as an employee and merely being an employee does not demonstrate allegiance to the government because if it did then the concession would have said so.

20. Mrs Johnrose argued that taking into account the FtTJ's acceptance that he worked for the government and the concession at paragraph 2(c) of the Refusal letter the FtTJ had erred when she concluded he would not face a risk of persecution. In short, she submitted he was not an "ordinary citizen" and consequently the FtTJ should have then found he was at risk of persecution. She also reminded me that it was the FtTJ who had originally found an error in law in Judge of the First-tier Tribunal Brookfield's decision.
21. Whilst not using the language set out in MOJ I am satisfied the FtTJ concluded the appellant was an "ordinary citizen." She had regard to his role, the length of time he worked at the Embassy and what he did when he returned to Somalia. She accepted at paragraph [36] he was an employee but only an employee and she then concluded that the appellant was not at risk if he were returned to Mogadishu because she was satisfied he was not associated with the security forces; any aspect of government or official administration or any NGO or international organisation.
22. The appellant did not claim to be a member of the government or part of official administration. He worked for Somali diplomats in Mozambique when they attempted to set up an embassy. I am satisfied the FtTJ did not err when considering the respondent's concession in relation to the appellant and was entitled to conclude he was an "ordinary citizen."
23. The Tribunal noted in MOJ the risk to members of target groups such as politicians, police officers and government officials was reducing. The Tribunal made clear that where a person returned to Mogadishu and had no nuclear family or close relative then an assessment of all the circumstances was necessary. The FtTJ carried out this assessment in paragraph [40] and it was open to her to find not only could he return safely to Mogadishu but he would be able to support himself and there was a girlfriend and some extended family to support him.
24. It cannot be said the FtTJ did not consider either the concession or the conclusions of MOJ and I am satisfied the findings she reached were open to her.
25. The third ground of appeal related to evidence the FtTJ did not specifically refer to in her determination. The FtTJ made clear that she had before her the appellant's bundle and at paragraph [29] she stated she had had regard to all of the evidence in the round. Whilst the FtTJ did not specifically refer to the report from Allidmaale News Centre and other articles and pictures the fact remains the FtTJ accepted his claim to be employed but made findings about what happened after he returned. She considered his role and reached findings about his role that were open to her. There is no error in her approach.
26. Mrs Johnrose's fourth ground of appeal centred on her submission that the FtTJ failed to consider the implications of HJ and what would happen to the

appellant if he were returned. Mrs Johnrose submitted HJ does not merely apply to point of entry and paragraph [82] of HJ confirms this. The country evidence before the FtTJ pointed to the fact that Al Shabaad would not present a problem to the appellant in Mogadishu especially in light of the FtTJ's finding he was not at risk. I am therefore satisfied that based on those factors the FtTJ was entitled to conclude there was no future risk.

27. The final ground of appeal related to credibility and in particular the FtTJ's findings at paragraph [30] of her determination. I am satisfied the FtTJ was entitled to make the findings she did. The FtTJ had regard to the fact the appellant claimed the solicitor's letter contained errors but she rejected his explanation. The findings were open to her and do not demonstrate an error.
28. Having considered all of the arguments put forward by both representatives I am satisfied there was no material error.

DECISION

29. There was no material error. The original decision is upheld.
30. The First-tier Tribunal did make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

Signed:

Dated: **April 7, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

As I have dismissed the appeal I make no fee award.

Signed:

Dated: **April 7, 2015**

Deputy Upper Tribunal Judge Alis