



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07086/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 September 2015**

**Decision and Reasons
Promulgated
On 20 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR MOHAMED ABDULLAHI MOHAMED

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Anyene, instructed by Calices Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

ERROR OF LAW DECISION & REASONS

1. The Appellant is a national of Somalia, born on 10 September 1986. He arrived in the United Kingdom on 14th April 2014 and claimed asylum on arrival. The basis of his claim was that he had been running a cosmetics shop in Hamar Weyne and had been targeted by Al Shabaab as a result. His application for asylum and leave to enter was refused by the Respondent on 29th August 2014 and an appeal was lodged against this decision.

2. The appeal came before First Tier Tribunal Judge S. J. Clarke for hearing on 11th November 2014. In a decision dated 20th November 2014, he dismissed the

appeal. An application for permission to appeal was made one day out of time on the basis that the Judge's credibility findings were not based on proper evidence, in particular relating to the shop ownership and no sufficient consideration was given to the country situation and the Judge failed to take into account relevant aspects of the Appellant's evidence: [26], [28], [29] and [30] of the decision refer. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 27th April 2015 on the basis that it was arguable the Judge's finding in respect of the ownership of the shop should have been reasoned and it was unclear that documentary evidence would have been readily available given the country situation in Somalia [26]; it was arguable that the Judge further erred in his consideration of credibility at [28] and that no consideration had been given to the Appellant's witness statement at [10]; it was arguable that the Judge erred at [29] as to his finding regarding the build-up of harassment given the lack of clarity on this issue at interview. The Judge considered these errors to be arguably material in respect of the credibility findings and that, given evidence was submitted that post dated the country guidance decision in MOJ CG [2014] UKUT 442 it was arguable that the credibility findings affected the ultimate outcome of the appeal. She also extended time to admit the application given the very minor degree of lateness and the weight of the issues involved.

Hearing

3. At the hearing before me, the Appellant's representative sought to adopt reasoning of Upper Tribunal Judge Lindsley. He submitted in respect of the fact that First Tier Tribunal Judge Clarke took issue with the lack of supporting documentation as to whether the Appellant had a shop that there should have been some accommodation of the country situation and there was nothing directly or indirectly to suggest that a shop in Hamarweyne would have to be registered. In respect of the alleged inconsistencies in respect of the Appellant's father and whether or not he was able to run a shop himself this was a misunderstanding on the part of the Judge. The Appellant's father was more like a wholesaler. When the Appellant married he had a need to support his family and needed his father's assistance. At [29] the Judge found that the build up of interest by Al Shabaab had not been alluded to earlier. In his interview at Question 117 the Appellant was asked: "*Have you any previous experience with them?*" It is not clear that this means harassment, it is ambiguous. The Judge further erred at [35] in the manner in which he interpreted the country guidance decision in MOJ. If the Appellant were to return there would be a proper basis on which Al Shabaab could pick him up: see 29-36 of the Appellant's bundle.

4. In response, Mr Clarke submitted that there was no material error of law. He submitted that the Appellant's credibility had been damaged by his failure to corroborate ownership of a cosmetics shop: is there a shop and did his father assist in setting it up? In MOJ at 334 and 349 reference is made to business activity and that is the backdrop to the finding in respect of the shop. The Judge criticizes the lack of evidence in relation to the shop on two counts both as the Appellant has a family in Mogadishu who could provide evidence and one would expect access to book keeping, rental payments, lease, written

agreements, suppliers and a landlord. It was reasonable to expect the Appellant to have acquired that and for such documentation to exist. He further submitted that, in respect of the finding at [28], at [14] it was quite clear the Judge was mindful of the evidence that the Appellant's father gave him funds to open the shop to support his wife. In light of the country guidance decision, the idea that the Appellant was compelled to pursue a dangerous venture is not consistent with the economic boom that exists in Mogadishu. The Judge was entitled to place negative weight on that inconsistency. In respect of the assertion that there had been no build up of harassment and threats as this was not mentioned in interview and that no question had been put regarding previous visits, the interview clearly evidences that Al Shabaab came once, the Appellant refused to assist them and he then went to his parents and left immediately: question 99 onwards. Nothing about that suggests a build-up and there had been ample opportunity for the Appellant to put this forward. The Judge at [31] was concerned about the Appellant changing his account to a build-up rather than one occasion. In respect of the country guidance decision MOJ, there was further evidence provided at 29-36 but Mr Clarke submitted that this was insufficient to depart from the country guidance decision. He referred me to the decision of the Upper Tribunal in DSG & Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC) at [20] where it cites from the Practice Direction and also at [26] and [24]. He referred me to MOJ at [398] and submitted that the Appellant's evidence at [29] does not identify when specific attacks took place. MOJ identifies Al Shabaab is a crippled organization. There are attacks but they are targeted and civilians would be able to avoid them. He submitted that Articles 3 and 15C are not engaged. In respect of the article at page 31, this identifies Al Shabaab as a reduced force which has been infiltrated and there is nothing about what has happened since the infiltration was identified and it does not identify anything to show Al Shabaab is in control of areas of Mogadishu. In respect of the article at page 33, he submitted that this was not even Mogadishu but 105 miles away and does not warrant the cogent evidence envisaged in SG (Iraq) [2012] EWCA Civ 940 at [47]. He submitted that it was not enough to warrant departure from the country guidance decision in MOJ and in light of the credibility findings there was nothing here to suggest a risk *per se* to the Appellant or to evidence of the kind of risk to a shop owner that is being asserted.

5. In response to Mr Clarke, Mr Anyene, the Appellant's representative submitted that the passages in the interview I had been taken through show no buildup but a constant threat does not show a number of visits to the shop and so this was immaterial and cannot properly found a submission the Appellant has changed his evidence. He submitted in response to the documentation issue that the Appellant had said in his interview he would hide the cosmetics and why would anyone be advertising that they are selling skin lightening creams given Al Shabaab? In respect of the country guidance decision and whether or not there had been a durable change, he submitted that the Appellant is someone who is known by Al Shabaab. He had been requested to do a service and turned it down so he is in the category of a targeted person. His wife and children have left Somalia and he would be of interest in any event.

Error of law decision and reasons

6. I reserved my decision in order to consider the parties' submissions in light of the relevant documents and jurisprudence.

7. In respect of the first ground of appeal, First Tier Tribunal Judge Clarke considered the issue of whether or not it was credible that the Appellant owned or ran a shop at [26]-[28] of his decision. At [26] he states: *"I note that despite having parents still living in Hamarweyne he has never provide (sic) any supporting documentary evidence to confirm that he had his own shop. This would have been readily available to him and the parents were in contact with UK family members."* At [28] he states: *"My observation is that there is inconsistent evidence about the father helping him to open the shop but not wanting him to open the shop, the father being afraid of selling creams because of Al Shabaab but at the same time helping the Appellant work in the shop, when the Appellant was telling customers of his hidden creams, and it is implausible to open a shop selling forbidden items if his own father was threatened by and scared of Al Shabaab."*

8. Whilst the Judge has framed his findings on the basis that he "noted" and "observed" the issues he sets out, they are clearly his findings on the material matters. In respect of the first issue at [26], the point regarding ownership of the shop and documents to show ownership was not raised in the Respondent's refusal letter, nor does it appear to have been raised by the Respondent during cross examination or submissions. It appears to have been raised for the first time in the form of a finding by the Judge, without the Appellant having had the opportunity to respond to the point in his evidence or in submissions through his representative. This is procedurally unfair and constitutes a material error in law. I also accept the specific grounds raised on behalf of the Appellant ie. that the Judge's finding in respect of the ownership of the shop should have been better reasoned and it was unclear in any event that documentary evidence would have been readily available given the country situation in Somalia.

9. In respect of the second point, at [28] of the Judge's decision, I have considered the record of the Appellant's evidence at [14] of the Judge's decision, the Appellant's witness statement at [2] and the interview record at questions 13-26 and 74-87. I have also taken into account that in his response to questions about his clan, the Appellant stated that they are business people selling cosmetics, clothes, sweets and snacks and they were a minority clan and lacked protection [Q's 26 and 31]. I find that the Judge erred materially in law in that I do not consider that the Appellant's evidence in respect of his father's role is inconsistent, in that the fact that both the Appellant and his father worked selling cosmetics - the father via wholesale and the son through a shop, is consistent with membership of the Shanshiyo minority clan. The Appellant clearly stated that he did not have to hide perfumes and shampoos because they could be sold from the shelves, but skin lightening creams were hidden. Even if his father had had problems with Al Shabaab in the past it is not implausible that the Appellant would open a cosmetics shop given that this was effectively the family's business and a common business for members of his

clan and given that many people had problems with Al Shabaab for a variety of reasons.

10. In respect of the Judge's finding at [29] that: "*in the asylum interview there is no build up to this entrance into his shop, no build up of harassment and threats*" which was not what he was told at the hearing, and at [31] that: "*the Appellant has changed his account of what he said happened to him by trying to build up a period of harassment before the one isolated incident he first complained of*" I find that the Judge erred materially in law due to the lack of clarity on this issue at interview. At Q.117 the Appellant was asked: "*Had you any experience with them?*" to which he replied "No." The difficulty is that whilst it is clear from Q.115 that the Appellant was being asked about Al Shabaab the question is ambiguous, particularly given that the interview was conducted through an interpreter. The Appellant was not asked in interview whether he had previously received any threats from or harassment by Al Shabaab but he did raise this clearly in his statement at [3] and in his oral evidence at [15] and [16] yet the Judge gave no weight to the consistency of his evidence on this issue.

11. Consequently, the Judge's finding at [32] that the Appellant was not credible and was not targeted by Al Shabaab is unsustainable.

12. In respect of the risk on return in light of the country guidance decision in MOJ CG [2014] UKUT 442, whilst clearly country guidance decisions must be followed, there was evidence before the Judge that post-dated that decision and may have made a material difference had the Judge found the Appellant to be credible. Mr Clarke took issue with the substance of that evidence, but given that I have found that the Judge's findings on credibility affected the ultimate outcome of the appeal, assessment of credibility in light of the country guidance decision and any evidence postdating that decision will be a matter for the First Tier Tribunal re-hearing the appeal.

Conclusion

13. For the reasons set out above, I find that First Tier Tribunal Judge Clarke erred materially in law in dismissing the appeal and that decision is set aside. In light of the fact that the Judge did not accept the credibility of the Appellant's account there will need to be a further hearing in order that the Appellant and any witnesses upon which he wishes to rely can give oral evidence. I remit the appeal for a hearing *de novo* on all issues by the First Tier Tribunal.

Deputy Upper Tribunal Judge Chapman

19 November 2015