



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM  
APPEAL NUMBER: AA/01104/2015

CHAMBER)

THE IMMIGRATION ACTS

Heard at: Field House  
on 22 February 2016

Decision and Reasons Promulgated  
on 12 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

[A A]

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms J Fisher, counsel (instructed by Lawrence Lupin Solicitors)

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity direction. This direction is to remain in place unless and until this Tribunal or any other appropriate court, directs otherwise. As such, no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. Failure to comply with this direction could amount to a contempt of Court.
2. The appellant is a national of Somalia, born on [ ] 1949. His appeal against the decision of the respondent refusing his asylum and human rights claims was dismissed by the First-tier Tribunal Judge in a decision promulgated on 1 October

2015. The appeal was heard at Hatton Cross on 7 May 2015. There was accordingly almost a five month delay from the date of hearing and the subsequent promulgation of the decision.

3. On 30 November 2015, Upper Tribunal Judge Goldstein granted the appellant permission to appeal on the basis that it was arguable that the First-tier Tribunal Judge's determination is unreliable because of the effluxion of time. There was "an undeniable and regrettable four month delay" between the hearing of this appeal and promulgation. Judge Goldstein was persuaded that this does raise a concern, mindful not least of the Judge's adverse credibility findings, given the guidance in MOJ and Others (Return to Somalia) Somalia CG [2014] UKUT 00442 (IAC) as it relates to the risk on return to those claiming to be associated with the Somali government.
4. Ms Fisher, who did not represent the appellant at the hearing in May 2015, submitted at the outset that there were two grounds relied on: the delay and the failure to give proper reasons.
5. She noted the Judge's findings of credibility against the appellant.
6. She referred to the decision in MOJ, where at paragraph (i) of the headnote, the Tribunal concluded that generally a person who is "an ordinary civilian" (i.e. not associated with security forces, any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the Human Rights Convention or Article 15(c) of the Qualification Directive.
7. In the reasons for refusal, the respondent stated at paragraph 34 that in applying the guidance "it is deemed possible for you to return to Mogadishu and not face any persecution, as your claim to work for the government has not been accepted and therefore your risk upon return to Mogadishu is made in regards to you being an ordinary citizen of Somalia."
8. Ms Fisher noted that there was thus a crucial issue as to whether or not the appellant had been working for the Somali government. In that respect, the appellant had produced an ID card which had been before the First-tier Tribunal. It was also produced at the hearing on 22 February 2016. The appellant had also produced various letters in support of his claim from the Deputy Minister of the Ministry of Commerce and Industry in Somalia, as well as an affidavit of a lawyer certifying the translations and a list of members of parliament of Somalia and various articles and reports.

9. At [43] the First-tier Judge was not satisfied that the appellant had worked for the Somali government as claimed. As there were inconsistencies in his evidence, he had not established that he worked for the Somali government.
10. Ms Fisher submitted that although the ID card relating to the appellant's employment was before the First-tier Tribunal, the Judge made no mention of it when considering the credibility of the appellant's claim that he worked for the government.
11. The ID card said to have been issued on 6 February 2014 was produced by the appellant. I noted that it stated on the card itself that it is issued by the Federal Government of the Somali Republic, Ministry of Commerce and Industry. It is stated to relate to the Office of the Director General. The ID card also contains a picture of the appellant and refers to him as the Head of Section.
12. Although the ID card was in the bundle, the Judge did not refer or have regard to it at all. Moreover, in relation to other matters relied on by the Judge as showing inconsistencies, it is contended that the appellant had sent through his solicitors a detailed document setting out his response to the interview. However, the Judge did not deal with that either.
13. Ms Fisher submitted that having regard to the inordinate delay between the date of hearing and the promulgation of the Judge's decision, the assessment of credibility issues was 'rendered unsafe' and tends to undermine 'the loser's' confidence in the correctness of the decision – Sambasivan v SSHD [2000] Imm AR at [15]. In the present case, it is clear that credibility was the issue before the Tribunal [38]. The Judge did not address the submissions and documentation made and supplied by the appellant.
14. Mr Tarlow on behalf of the respondent stated that he had serious “misgivings” in seeking to uphold the decision. The Judge had not dealt with the ID card which goes to the heart of the appeal. The issue was whether he was employed by the Somali government. That affects the rest of the evidence surrounding that issue. He accepted that on its own, the failure by the Judge to consider a crucial document was enough potentially to infect the subsequent adverse credibility findings made against the appellant.
15. He therefore accepted that the matter should be remitted to the First-tier Tribunal for a fresh decision to be made.

### **Assessment**

16. It is evident that the First-tier Tribunal Judge did not consider the ID card, the original of which was produced. There had been no contention that the card was

not genuine or lacked authenticity. Moreover, the Judge failed to have regard to the detailed responses made by the appellant through his solicitors regarding his interview.

17. In the circumstances, I found that the concession made by Mr Tarlow was entirely appropriate. The appellant has thus not had his case considered on the basis of all the relevant evidence relating to his employment. I find that it is accordingly appropriate having regard to the Senior President's Guidance, for the case to be remitted to the First-tier Tribunal, Hatton Cross, for a fresh decision to be made by any other Judge.
18. The agreed hearing date is [ ], at Hatton Cross.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. It is remitted to the First-tier Tribunal, Hatton Cross, for a fresh decision to be made. The new hearing date is [ ].

The anonymity order made by the First-tier Tribunal is continued.

Signed

Date 17 March 2016

Judge C R Mailer

Deputy Upper Tribunal Judge Mailer