



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

Appeal Number: DA/01887/2014

**THE IMMIGRATION ACTS**

**Heard at the City Centre Tower,  
Birmingham  
On 8 February 2016**

**Decision & Reasons Promulgated  
On 11 February 2016**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MR DAHIR FARAH AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision promulgated on 1 July 2015 of First-tier Tribunal Judge Andrew. The decision refused the appellant's appeal against the respondent's refusal dated 1 October 2014 to revoke the deportation order made against him on 6 November 2007.
2. There was no-one present for the appellant. The Tribunal file showed good service of the notice of hearing on him and on his legal representatives. There was nothing on the Tribunal file to indicate why there was no appearance. Mr Mills informed me that he had been told on the telephone

by the legal representatives that they were no longer acting but there was nothing before me to indicate that this had been communicated in the proper form to the Tribunal. In all the circumstances, with reference to the overriding objective in Rule 2 for the Tribunal “to deal with cases fairly and justly” and Rule 38 it was my view that good notice had been given of the hearing and that it was in the interests of justice to proceed in the absence of the appellant and his legal representatives.

3. The background to this matter is that the appellant came to the UK on 6 April 1999 and claimed asylum. That claim was refused on 30 March 2000 but he was granted exceptional leave to remain until 30 March 2004. On 16 November 2004 he was granted indefinite leave to remain. As a result of nineteen convictions for 25 offences the respondent made a deportation order against him on 6 November 2007. Removal was set for 21 November 2007 but was cancelled on 15 November 2007 due to a human rights claim under Rule 39 made to the European Court of Human Rights (ECtHR). The deportation was further delayed as on 6 February 2009 the FCO advised that all Somali cases should be adjourned pending the conclusion of ECtHR proceedings. The appellant continued to offend. In late 2011 and 2012 he appeared to wish to co-operate with the Facilitated Return Scheme but this was not continued as he never completed the full paperwork. He then claimed asylum in Belfast on 18 October 2013 under an alias. This led to a conviction for dishonest representation on 23 January 2014. The respondent looked at his case again and on 1 October 2014 refused to revoke his deportation order.
4. The appellant’s claim before First-tier Tribunal Judge Andrew was that his deportation order should be revoked as he was a refugee, on Article 3 ECHR and humanitarian protection grounds and on Article 8 ECHR grounds.
5. His grounds of appeal against the decision read as follows:

“Appellant has well-founded fear of persecution. It is unfortunate that he was unable to provide documentation from the internet or indeed in English. He would like an opportunity to present this documentation to aid his appeal. He therefore wishes for permission to appeal to the Upper Tribunal for a fair hearing.

Appellant states the country guidance is out of date and Al-Shabaab are still active in Mogadishu, and there is a general threat to all.

He had written articles against government practices and would like the Tribunal to consider these accordingly and subjectively, not objectively.

Furthermore appellant has European wife and his rights under EU law should be considered. She is currently residing with him in the UK.”
6. Judge Andrew’s view of the appellant’s asylum, Article 3 and humanitarian protection claims is contained in paragraphs 20 to 27 of her decision. These read as follows:

“20. I have given careful consideration, in the round, to all the evidence that is before me.

21. I have taken into account the decision that is at Annex K of the respondent's bundle. The starred decision in **Devaseelan** clearly applies to the findings made in this decision at paragraphs 16 to 24. I am told, however, that the marriage to a girl in Switzerland referred to in paragraph 20 of the decision no longer subsists, a talaq divorce having taken place. However, I have seen no evidence of this. I have to say that paragraph 21 of this decision would not seem to apply to this appellant and I have taken no note of this.
22. The appellant's claim now is that he would be at real risk on is (sic) return to Somalia because of various articles he has written: he now describes himself as a journalist. He claims that he has heard from a friend in Somalia that he will be at risk if he returns there. He hears from this friend through Facebook. (At this point in the hearing the appellant showed us his mobile telephone but in view of the fact that any communication was in Somali I am unable to take note of this). The appellant also claims that a member of the Somali Parliament visited Turkey about a year ago. His cousin went to see him and the MP told the appellant's cousin the appellant could not return.
23. However, I have no evidence of any of this. The articles which are claimed to be politically offensive and are in the appellant's bundle are all written in the Somali language. None of them have been translated and in accordance with the Procedure Rules I am unable to place any (sic) weight on these documents. I have no evidence either from either the appellant's friend in Somalia or the appellant's cousin to confirm the assertions that have been made about the warnings given to him through them. In this regard I bear in mind the appellant's evidence that is (sic) cousin is now in Birmingham. The appellant has been professionally advised in these proceedings and I would have expected him to be asked to provide corroborative evidence of his claims.
24. In saying this I have noted the letter at page 7 of the bundle. However, it is clear from the appellant's own evidence to me that the information contained in the second paragraph of this letter came from the appellant himself. Thus I place no weight on this letter as confirmation that there is a real risk of persecution should the appellant be returned to Somalia.
25. I have taken into account the country guidance case of **MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**. This case makes it clear that there was no longer a real risk of clan-based violence in Mogadishu. The appellant did refer to his clan but I apply the country guidance in **MOJ** and find he would have no real fear of persecution because of his clan.
26. The appellant has also claimed he is afraid of Al-Shabaab in Mogadishu. However, again in accordance with the findings in **MOJ** I am satisfied that there is (sic) no real risk of the appellant being persecuted by Al-Shabaab in Mogadishu.
27. Accordingly I am satisfied that there would not be any very significant obstacles in the appellant's integration in Somalia. He has a friend there. He speaks the language. He continues to meet with Somali people in the United Kingdom. Whilst he may no longer have property in Somalia he does have at least one friend there. He can no doubt put

to good use any skills he has obtained in the United Kingdom on his return to that country.

28. I accordingly, and for these reasons, reject his asylum claim.”

The decision goes on to indicate at paragraphs 30 and 31 that the appellant’s humanitarian protection and Article 2 and 3 claims failed for the same reasons.

7. Addressing the appellant’s grounds as set out in the application form, the first ground has no merit where the appellant was represented by professional legal advisers in the First-tier Tribunal and had the opportunity to submit any supporting evidence for that appeal. He has adduced nothing to show that he was prevented from doing so and that he did not have a fair hearing before the First-tier Tribunal. The second paragraph of the grounds of appeal also has no merit where nothing before me indicates that there was material before Judge Andrew that could have led her to distinguish the country guidance case of **MOJ**.
8. Judge Andrew dealt comprehensively with the appellant’s claim to be at risk on return because he wrote anti-government articles in paragraphs 22 to 24 of her determination. Those findings, set out in full above, are not open to challenge where the relevant material was taken into account but not found to be sufficient to support the appellant’s claim or show a risk on return. The reference in the third ground to the judge considering this part of the claim “subjectively not objectively” goes against well-established case law principles for assessing a claim and risk on return.
9. The fourth paragraph of the grounds relates to the appellant’s claim to have a family life with a Norwegian national. As indicated at paragraph 34 and paragraph 41 (VI) the appellant’s evidence before the First-tier Tribunal was that his partner is a Norwegian citizen, was living there and that he would like to join her there. The relationship could not found an EEA or Article 8 claim before the First-tier Tribunal where the partner was not in the UK. If she has come to the UK since the decision of First-tier Tribunal Andrew it is open to the applicant to make a new Article 8 claim on that basis.
10. I noted that the grant of permission to appeal dated 27 July 2015 made a reference to paragraph (ix) of the headnote of **MOJ**. This, together with paragraph (x) reads as follows:
 

“(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

  - circumstances in Mogadishu before departure;
  - length of absence from Mogadishu;
  - family or clan associations to call upon in Mogadishu;

- access to financial resources;
  - prospects of securing a livelihood, whether that be employment or self employment;
  - availability of remittances from abroad;
  - means of support during the time spent in the United Kingdom;
  - why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.
- (x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.”

11. As in paragraph (x) of **MOJ**, it is for the appellant to explain why he would not be able to access the economic opportunities now available in Mogadishu. The grounds do not indicate what it was in the material before the First-tier Tribunal Judge that could have led to a conclusion that the appellant would be unable to return to Mogadishu. Judge Andrew addresses this part of the ratio of **MOJ** in paragraph 27 toward the end of her consideration of the protection claim. She finds that the appellant would not face very significant obstacles in reintegrating into Somalia, that he has a friend there with whom he had recently been in touch, speaks the language, has remained able to operate within Somali culture in the UK and would be able to put to good use any skills he has obtained in the United Kingdom. Those findings were open to the judge on the evidence before her. It is not my judgment that the First-tier Tribunal erred in failing to apply or misapplying the guidance contained in (ix) and (x) of the head note of **MOJ**.
12. For all of these reasons I do not find that the decision of the First-tier Tribunal was in error.

### **Notice of Decision**

The decision of the First-tier Tribunal does not disclose an error and shall stand.

Signed   
Upper Tribunal Judge Pitt

Date 8 February 2016