



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

Appeal Number: IA/19022/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2015**

**Determination
Promulgated
On 19 May 2016**

& Reasons

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**ABDULLAHI ABDI ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel, instructed by Lawrence Lupin Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this case is a national of Somalia who was born on 26 August 1982. He now appeals with leave against a decision of First-tier Tribunal Judge Moore, promulgated on 7 October 2014 following a hearing

at Kingston on 8 September 2014, in which his appeal against the respondent's decision refusing to revoke a deportation order against him, was dismissed.

2. The background to this application is set out within the very detailed determination of Judge Moore, and can be summarised as follows.
3. The appellant arrived in this country on 2 October 2002, claiming asylum a few days later. His application was refused on 27 November 2002 but he was granted exceptional leave to remain for one year. The appellant made an application for further leave to remain which was refused and his appeal dismissed. Subsequently an appeal on human rights grounds succeeded but on the respondent's appeal reconsideration was ordered and eventually, in 2007 (after the events which will be set out in a moment) the appeal was dismissed on asylum grounds, humanitarian protection grounds and on human rights grounds.
4. Very shortly after the respondent had been granted permission to appeal against the decision made by the adjudicator allowing the appellant's appeal on human rights grounds, on 24 December 2004 the appellant committed a serious offence of attempted robbery on a young woman at a bus stop, for which he was initially sentenced to three years' imprisonment with an additional eighteen months for breaching a community rehabilitation order (relating to sexual assault), which sentence was reduced on appeal to three years and nine months in total (three years for the attempted robbery plus nine months for the breach of his community rehabilitation order).
5. The respondent then made a decision that the applicant was liable to deportation, and a signed deportation order was served on him on 12 March 2008 (the appellant not having appealed against the notice of intention to deport him).
6. The appellant was bailed but failed to report as instructed while on bail and was listed as an absconder in 2010.
7. The following month, the appellant was convicted of an offence and sentenced to one year twelve days' imprisonment.
8. On 12 June 2012 the appellant was convicted of using threatening words and behaviour to a 15 year old girl for which he was sentenced to eighteen weeks imprisonment.
9. Then, on 25 April 2013, the appellant was convicted of assault occasioning actual bodily harm with intent to commit a sexual offence, for which he was sentenced to two years' imprisonment on 2 July 2013. The judge's sentencing remarks included the following comments:

“The jury by their verdict showed that on the evidence they were sure that you intended to commit a sexual assault falling short of rape, and it is clear from what you were saying at the time that you had in mind

licking her anus. Luckily that did not happen because of the intervention of others, but it has profoundly affected her. Her Victim Impact Statement shows that she now feels unable to go out anywhere in public on her own since the incident occurred. She says that she used to be a strong person, however, she now feels nervous and she gets upset every time she thinks about the incident. And she states that it upsets her to think about what may have happened had she not been able to get away from you.

This is not the first time that you have approached a female sexually and aggressively and it is likely, indeed certain, that drink played a part on both occasions. In 2004 you were made the subject of a community rehabilitation order for three years and shortly afterwards you were arrested for robbery.

I had wished to recommend you for deportation, but you are already the subject of a signed deportation order and the sentence that I pass is more than twelve months, so that is not necessary.

This was an offence committed at night, upon a woman on her own, and one that has affected her profoundly.

You have previous convictions of violence and one offence of a sexual nature. And I have no doubt that if in your drunken state you could have carried out the sexual part of the assault, you would have done so. I think these matters, particularly your record, take this matter outside the guidelines which suggest a range of up to two years' imprisonment for the full offence of sexual assault, which you in fact did not carry out."

10. The appellant subsequently appealed against the respondent's refusal to revoke the deportation order which had been made against him and it is that appeal which was dismissed by First-tier Tribunal Judge Moore in his determination promulgated on 7 October 2014. It is the appellant's appeal against that decision which is now before me.
11. The judge's findings are set out from paragraph 33 onwards of his determination. At paragraph 35, the judge noted the previous decision of Immigration Judge Aujla of April 2007 in which "the Tribunal did not accept the appellant's account that he was unfamiliar with his clan history and did not find the appellant credible with regard to his claim that he had no family left in Somalia from his father's side". The judge concurred with the findings and stated in terms that "I do not accept the appellant's claim with regard to his clan membership and I do not accept that the appellant has no family still living in Somalia".
12. In the second unnumbered paragraph within paragraph 35, in the last sentence the judge found that "in all the circumstances, I am satisfied that there is a reasonable likelihood that family members are still living in Somalia".

13. Having noted that the criminal history of the appellant since he had been in this country “has been prolific” (at paragraph 36) the judge, when considering the appellant’s rights under Article 8, gave appropriate consideration to what is set out within paragraphs 398 and 399A of the Immigration Rules, having first noted correctly that (having regard to paragraph 396) “Where the Secretary of State must make a deportation order in accordance with Section 32 of the UK Borders Act 2007 [as in this case], it is in the public interest to deport”.
14. Having had regard to what he found to be the appellant's private life in this country and his relationship with his parents here, the judge did “not accept that the appellant's right to private life outweighs the public interest in seeing him deported” and accordingly he was “satisfied that deportation was not in breach of Article 8”.
15. The judge had regard to the country situation in Somalia and in particular the decision of the European Court of Human Rights in *K.A.B.v Sweden* in which the court had found “that the most recent information suggested that the ‘security situation in Mogadishu has improved since 2011 or the beginning of 2012’” (at paragraph 43 of his determination). He noted (also at paragraph 43) that:

“The court continued that it was aware of the human rights and security situation in Mogadishu being serious, fragile and unpredictable, but the fact was that Al-Shabaab was no longer in power in the city, and ‘that the available country information does not indicate that the situation is, at present, of such a nature as to place everyone who is present in the city at a real risk of treatment contrary to Article 3 of the Convention’.”
16. Having had regard to the Country Information and Guidance Report dated 4 April 2014, which the judge considered showed that there was an improvement in the security situation in Mogadishu and an increasing number of areas in Somalia, he stated that “I do not accept that this appellant will be a real risk on return to Mogadishu, and even if he was, which I do not accept, there will be no reason why [he] could not relocate to Gedo or Puntland”.
17. The judge considered (at paragraph 44) whether there were any exceptional circumstances (such as might justify the grant of leave to remain under Article 8 outside the Rules) but considered that there were not. He found that the appellant could return to Somalia and maintain contact with his parents in this country if he wished to do so and that it was “more likely than not that family members are still living in Somalia and the appellant could make contact with them if that was his desire”. He did not consider that there were compelling reasons or exceptional circumstances why it would not be proportionate to deport this appellant, and accordingly, found at paragraph 45 that

“Having considered all the factors in this case, ... the public interest in having this appellant deported outweighs the appellant's right to private life and to family life in the United Kingdom, and therefore deportation would not infringe Article 8 of the ECHR.”

18. The judge also noted at paragraph 46 that the Immigration Act 2014 had introduced new provisions into the Nationality, Immigration and Asylum Act 2002, in particular Section 117B (Article 8: public interest considerations) and Section 117C (Article 8: Additional Consideration in cases involving foreign criminals). He concluded his determination as follows:

“The deportation of foreign criminals is in the public interest and the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. This appellant has been sentenced to a period of imprisonment of at least two years, and therefore the public interest requires deportation unless there are very compelling circumstances over and above those described in the exceptions in this section. This appellant has not been lawfully resident in the United Kingdom for most of his life and whilst to a degree has integrated into society in the United Kingdom, that integration had involved substantial periods of imprisonment for serious offences. I do not find that there would be very significant obstacles to the appellant's integration into Somalia to where it is proposed he would be deported.”

19. The grounds of appeal to the Upper Tribunal for permission to appeal are in substance the same as the grounds which had been submitted to the First-tier Tribunal for permission, save that some further arguments were made with regard to the reasons which had been given by Designated First-tier Tribunal Judge J. M. Holmes for refusing permission, which reiterate the arguments already made. There are five grounds, which can be summarised as follows:
20. Ground 1 complains that the judge failed to engage with the latest country guidance on Somalia, which was that given in *MOJ and Others (Return to Mogadishu) Somalia CG* [2014] UKUT 442, which had been promulgated some five days before Judge Moore's decision in this case had been promulgated (although Judge Moore's decision had been dated 15 September 2014, which is some three weeks before it was promulgated, and over two weeks before the decision in *MOJ* was promulgated). This is said to be relevant to the appellant's Article 3 claim.
21. Ground 2, also said to be relevant to the appellant's Article 3 claim, asserts that the judge failed to consider evidence “that even *MOJ* may be out of date on the question of risk from Al-Shabaab in Mogadishu”. It is said that there was evidence before the judge that the situation in Mogadishu had deteriorated, which the judge had not properly considered.

22. Ground 3, which is said to bear on the appellant's Article 3 and Article 8 claims, asserts that the judge had failed to give reasons (or as asserted at paragraph 31 of the renewed grounds, failed to give "clear reasons") for rejecting the evidence of the appellant's parents that he had no family members left in Somalia at all. The grounds themselves, while noting that the appellant's parents "were both nervous and unconfident witnesses" assert that they nonetheless were consistent in their evidence that the appellant had no family members in Somalia and that there was no positive evidence that he did.
23. Ground 4, which again is said to bear on both the Article 3 and Article 8 claims of the appellant, assert that the judge failed to give adequate consideration to the previous diagnosis of Mr Cauldwell, a forensic psychologist, that the appellant was suffering from post traumatic stress disorder when considering his likely circumstances on return to Mogadishu.
24. Ground 5 asserts that the judge made "errors" when conducting a proportionality assessment.
25. On behalf of the appellant, Ms McCarthy expanded on the grounds in oral argument. With regard to Ground 1, clearly the judge had not had *MOJ* before him when making his decision, which he should have done, because it was promulgated earlier than this decision. Particular reliance was placed upon the guidance set out in the head note at (vii) as follows:

"(vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer."
26. Ms McCarthy asserted that the Tribunal had not considered whether the appellant would have assistance from family members. At its highest the judge's finding was that he was likely to have some family members in Somalia but not that he would have such family members. Although at paragraph 35 the judge had not accepted that the appellant had no family still living in Somalia, he had not stated who this family was, and the finding that there would have been "some" family members present was not sufficient.
27. With regard to the suggestion that as the appellant's claim to be a member of a minority clan had been rejected, he should be regarded as having majority clan support available, it was a huge leap for the Tribunal to make from not being certain as to what family members still exist to the finding that there are family members in Mogadishu or that majority clan support would be available. The whole case had been decided on the basis of out of date country guidance.

28. In answer to an observation from the Tribunal that the new country guidance given in *MOJ* would appear to make it harder for applicants to prove they would be at risk on return to Mogadishu than had been previously believed to be the case, Ms McCarthy appreciated that her submission with regard to this ground would be difficult to sustain unless the Tribunal accepted her submission also that the conclusion that there would be family or clan support available to the appellant on return was unsustainable. The appellant's own evidence was that he did not have family there and had no contact with his siblings. The question marks surrounding this evidence arose because of apparent inconsistencies between what the appellant's father and mother had said when questioned about the mother's travel to Kenya. The Tribunal had concluded on that basis that the evidence that there was no family remaining in Somalia was inconsistent and therefore unreliable. This was the source of the disbelief, but nobody at any point had said that anyone could travel to Somalia. The mother's evidence had been that she had gone to Kenya and the father said he could not remember whether he had ever been to Somalia. It was unreasonable on the basis of the evidence for the Tribunal to have come to a positive conclusion that the appellant had family support available to him within Somalia.
29. Accordingly, although Ms McCarthy appreciated that if the Tribunal did not accept her submission that there would be no support available from the appellant's nuclear family or clan then the decision in *MOJ* would not add to his claim, her primary submission was that the Tribunal should not have found that there was a nuclear family there just because of some inconsistencies as to precisely what travel had been made in East Africa by the appellant's mother, when all the other evidence was that he had had no contact with his siblings.
30. The judge had failed to take proper account of the appellant's consistent evidence that he had no siblings in Somalia. His mother had named all her children when she came to the UK, and the only one who had ever come to the UK was this appellant. There was no evidence that the appellant's mother had been able to contact any of her other children.
31. With regard to Ground 2, which asserted that the judge should have considered properly the evidence of a deterioration of conditions in Mogadishu in that there had been further Al-Shabaab attacks there which had not been taken into account in *MOJ*, Ms McCarthy accepted she was in difficulty pursuing this ground "with any force" (and in the event did not pursue it at all).
32. With regard to Ground 3, this overlapped with Ground 1, because the reasons for rejecting entirely the evidence of the appellant's parents had not been fully set out. As with Ground 1, this appeared to be on the basis of "confusion" with regard to where the appellant's mother went during her trip to Kenya, and no allowance had been made for the difficulties she had when giving evidence. The Tribunal observed that Judge Moore had appeared to find (at paragraph 35) that the evidence was shifting on this

point, to which Ms McCarthy accepted that the evidence was “at times unclear”, but submitted that this was not enough to demonstrate dishonesty. The judge should have had in mind that the appellant's father was being asked about his wife’s travel some years before and that it was plausible that anyone giving evidence under these conditions “might find their evidence shifted”.

33. It was also putting the position too high when the judge had found that the appellant's father had “changed” his response, especially in light of the appellant's explanation. The rejection of the family’s evidence was based entirely on the inconsistency in connection with the travel to Kenya, but the other evidence was consistent with there being no contact with any other sibling. On this basis, it was submitted that the conclusion that the entire family was lying about what family there was in Mogadishu, based on one momentary inconsistency in the father’s evidence was perverse.
34. With regard to Ground 4, which was the judge’s failure to consider the medical needs of the appellant, the forensic psychiatrist’s report in November 2013 had concluded that he suffered from PTSD, the likely cause of which was his childhood experiences in Somalia. The forensic psychologist had also pointed to the appellant's use of drink and drugs as “emotional coping strategies”. Even if the judge had accepted that the appellant had family in Mogadishu, the fact that he had PTSD and had been misusing drink and drugs to cope with his psychological difficulties was highly relevant to whether he could integrate on return and how he would be perceived on return.
35. This overlapped with the submissions set out within Ground 5 as to errors in the proportionality assessment.
36. On behalf of the respondent, Mr Jarvis relied on the skeleton argument which he had prepared before the hearing, on which he too expanded orally. Notwithstanding the arguments which had been advanced on the appellant's behalf, the determination was sound. As far as the first Ground was concerned, if the appellant had considered that *MOJ* (promulgated after the hearing but just before the promulgation of the decision in this appeal) was important and helpful, there was no reason why his solicitors could not have alerted the Tribunal to that judgment. Further, and in any event, the guidance given in that case could not have assisted the appellant, because the judge had considered the relevant questions in any event, which were first, as to the appellant's clan membership, secondly, whether he had nuclear family in Mogadishu and, thirdly, whether he had any close relatives there.
37. The respondent also relied on *MA (Somalia)* [2010] UKSC 49, in which the Supreme Court had upheld the Tribunal in its finding in that case that an appellant who had not discharged the burden of showing that he had no connections in Mogadishu and had not told the truth, should not be taken as having established that he had no connections in Mogadishu. This decision was consistent with the approach taken in *NM and Others (Lone*

women, Ashraf) Somalia CG [2005] UKIAT 00076, where the Tribunal had stated that it was a lawful approach for a judge to treat an applicant who had not been believed in his or her claim to be from an ethnic minority clan, as being from a majority clan.

38. Accordingly, in this case, as this appellant had not discharged the burden of proof upon him to show that he had no connections in Mogadishu, and whose credibility had been rejected both in his 2007 application and also before Judge Moore, there was no evidential platform on which Judge Moore was required to find that he was from a minority clan or had no family or other connections within Mogadishu. The appellant had failed to show, whether or not he had any family connections, that there was some reason why he could not find work himself.
39. With regard to Ground 2, that *MOJ* was out of date, this ground was answered in the skeleton argument but Mr Jarvis did not expand on what was said there in oral argument, as the appellant had not relied on this ground in the course of this hearing.
40. With regard to the third and fourth Grounds, the judge had given clear reasons for rejecting the parents' evidence, and insofar as the judge had relied on the previous finding of lack of credibility, made in 2007, the judge had not treated this as binding but properly used this judgment as his starting point. With regard to the report from the forensic psychologist, not only was this report nearly a year old at the time of the hearing, but in any event, for the appellant's medical condition and historic abuse of drink and drugs to be material to the consideration of risk on return, the appellant had first to establish that there would be no support available to him on return, either from his clan and his family, which for reasons already given, he had not done. In these circumstances, the judge was entitled to find as he did.
41. With regard to proportionality, the judge had proper regard to paragraphs 398 and 399A of the Rules, and was entitled to find that the appellant's circumstances were not so compelling as to outweigh the very great public interest in his deportation.

Discussion

42. So far as the first Ground is concerned, that the judge failed to have regard to the guidance given in *MOJ*, as Ms McCarthy recognised during the hearing, if anything the new guidance would have made this appellant's argument more difficult to sustain. It is clear that the judge's finding that this appellant would not be at risk on return was founded upon the appellant's failure to satisfy him that he would be without any support on return. As Ms McCarthy conceded during the hearing, she could see that the applicant would be "in difficulties" if this Tribunal did not accept her submission that the judge's conclusion that there would be support from the appellant's nuclear family or clan support was wrong. The only basis upon which this ground could succeed was that the judge should not have

found that support would be available to him but should have accepted his evidence that he had had no contact with his siblings and there was no support available in Mogadishu.

43. However, the judge gave his reasons for rejecting the evidence of the appellant's parents in the second unnumbered paragraph within paragraph 35, which was that his mother's evidence had been contradicted by the evidence given by his father, and that his father had subsequently changed that evidence. As the judge stated, "I find the evidence in relation to any family living in Somalia to be inconsistent and unreliable" and for this reason, "in all the circumstances, I am satisfied that there is a reasonable likelihood that family members are still living in Somalia".
44. In my judgement, the judge was entitled to reach this finding, and in light of the adverse credibility findings which were made, the appellant simply had not established either that he had no family support available to him or that he would not have clan support either. For the same reasons, the submissions contained within Ground 3 also fall away.
45. Ground 2 is unarguable, and was not pursued during the hearing. With regard to the fourth Ground, again, any argument based on the appellant's post traumatic stress disorder, coupled with his reliance historically on drink and drugs could only succeed in circumstances where he had also established that he would be without support on return, which he had not done.
46. In light of the huge public interest in deporting foreign criminals such as this appellant, in the absence of any compelling reason why the appellant should not be deported, his Article 8 claim was bound to fail. Certainly, the judge's findings with regard to proportionality are entirely adequately reasoned, and the judge has had proper regard to the relevant Rules - see especially from paragraphs 36 to 42, and 44 to 46 (in which reference was also made to the new Section 117C of the 2002 Act, introduced by Section 14 of the 2014 Act (as already noted at paragraph 18 above).
47. Accordingly, there being no arguable material error in Judge Moore's determination, this appeal must be dismissed.

Decision

48. **There being no material error of law in the determination of the First-tier Tribunal, the appellant's appeal is dismissed.**

No anonymity direction is made.

Signed:

A handwritten signature in black ink on a light blue background. The signature reads "Ken Craig" in a cursive, slightly slanted script. The "K" is large and the "C" in "Craig" is particularly prominent.

Upper Tribunal Judge Craig

Date: 13 May 2016