



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

Appeal Number: PA/00154/2015

THE IMMIGRATION ACTS

**Heard at North Shields
On 25 February 2016
Prepared on 26 February 2016**

**Decision & Reasons Promulgated
On 28th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**A. I.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: Mr Markus, Counsel instructed by Elder Rahimi,
Solicitors

For the Respondent: Mr Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Somalia. He claims to have entered the UK illegally as an unaccompanied minor on 24 January 2005. The Respondent refused that claim, but granted him discretionary leave to remain until 19 October 2007 because she accepted that he was a minor. His upgrade appeal against the refusal of his asylum claim was heard and dismissed in a decision promulgated by First Tier Tribunal Judge Barrie on 2 June 2005.
2. In due course the Appellant sought to vary his leave, renewing his asylum claim. Initially no decision was made upon that application, and the

Appellant committed a number of offences whilst awaiting one. As a result, although his application remained outstanding, the Respondent invited him in November 2011 to explain why he should not be deported from the UK. His response prompted a re-assessment of his circumstances, which led to a further refusal of his asylum claim, and the grant of a further period of DLR to 11 December 2012.

3. The Appellant continued to commit offences. He made an application to vary his leave, and a further asylum claim in September 2012. Ultimately a decision was made on that application on 14 May 2015 when the Respondent decided to make a Deportation Order in relation to him, and to reject once more his asylum claim.
4. The Appellant's appeal against these immigration decisions was heard, and allowed on asylum grounds, in a decision promulgated by First Tier Tribunal Judge Gillespie on 14 July 2015.
5. Upper Tribunal Judge Martin granted the Respondent permission to appeal that decision on 31 July 2015 on the basis that the Judge had arguably failed to give proper consideration to the risk upon return to Somalia and the relevant caselaw.
6. Thus the matter comes before me.

Error of law?

7. The Respondent argues that although the decision does make reference to the current country guidance in MOJ & Others (return to Mogadishu) Somalia CG [2014] UKUT 442, it fails to demonstrate that the Judge has actually applied the guidance contained therein to the findings of primary fact that he has made.
8. No complaint is made before me by the Respondent about the Judge's re-appraisal of the findings of fact made by Judge Barrie in relation to the Appellant's clan membership, or, the area of Somalia in which his family had previously lived. Thus it is accepted (at least for present purposes) that the Judge was entitled to review the available evidence upon these issues, and reach contrary findings to those made by Judge Barrie. Thus it is accepted that it was properly open to him to find that the Appellant is a member of the Ashraf minority clan, and that he had never lived in Mogadishu save for a short period as an infant, because his family were actually based in the town of Qoriyoley in the province or region of Lower Shabelle. Those findings must stand.
9. The decision does not address directly whether the Appellant could travel in safety from Mogadishu airport to the town of Qoriyoley, or to the province or region of Lower Shabelle. Nor does it address directly whether the Appellant could live in safety in that town or that region. Indeed it is not at all clear that the Judge even addressed these issues by inference. Instead he looked simply, and very briefly, at the issue of whether the Appellant could live in Mogadishu upon return to Somalia, and concluded that he could not [17].
10. Although the Judge did make a very brief reference to the decision in MOJ, I accept that the decision falls well short of demonstrating that the Judge engaged with the careful guidance to be found therein upon the complex situation within Somalia, which the

Upper Tribunal concluded had changed very substantially since it conducted its assessment of the available evidence in AMM (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445.

11. I accept that it was simply not enough to state simply; *“He would return to Mogadishu as a member of the Ashraf minority. He has been absent from Somalia throughout his adult life. He has no source of protection from any influential or powerful individual or body. He would arrive from the UK in conditions of homelessness and destitution. He has a criminal record. All these factors are such that their cumulative effect causes me to consider that he would be at real risk of persecution or of other serious harm on return to Somalia”*. It is plain that the careful assessment of the range of factors identified in MOJ did not occur, and it can reasonably be said that in a number of key respects the Judge’s approach is quite simply inconsistent with the guidance to be found in MOJ. There was no evidence before the Judge to suggest there had been a significant decline in the situation in Mogadishu for those returning to Somalia from Europe, since the Upper Tribunal had conducted its assessment in MOJ. No such decline was noted by the Upper Tribunal in MSM (journalists; political opinions; risk) Somalia [2015] UKUT 413, or by the European Court in RH v Sweden 4601/14. Thus, if the Judge intended to depart from the guidance to be found in MOJ it was in my judgement not open to him to do so. Accordingly, although reference is made in the decision to MOJ the decision does disclose a material error of law that renders the decision upon the asylum ground of appeal unsafe.
12. Having reached that conclusion it is unnecessary to deal further with the other criticisms raised in the lengthy grounds of appeal.
13. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard. In the circumstances of the appeal I am satisfied that this is the correct approach. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise that is required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
14. In my judgement the appeal must be remitted to the First Tier Tribunal for re-hearing with only the following findings of Judge Gillespie preserved;
 - a) The Appellant is a member of the Ashraf.
 - b) The Appellant spent two years as an infant in Mogadishu with his family, but otherwise he lived with his family in the town of Qoriyoley in the province or region of Lower Shabelle.
 - c) The Appellant has been unable to trace his mother and sister.
 - d) The Appellant has a maternal aunt, who lives in Kenya.

- e) The Appellant has a first cousin (the daughter of that maternal aunt) who lives in the UK with her family.
15. Having reached that conclusion, I make the following directions;
- i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. The appeal is not to be listed before Judge Barrie or Judge Gillespie.
 - ii) A Somali interpreter is to be booked for the hearing.
 - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 25 March 2016.
 - iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

16. The decision promulgated on 14 July 2015 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;
- i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. The appeal is not to be listed before Judge Barrie or Judge Gillespie.
 - ii) A Somali interpreter is to be booked for the hearing.
 - iii) The appeal is to be listed on the first available date at the North Shields hearing centre after 25 March 2016.
 - iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 26 February 2016