



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03225/2015

THE IMMIGRATION ACTS

Heard at : UTIAC Birmingham
On : 15 May 2017

Decision Promulgated
On : 19 May 2017

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ABDALLAH ABDIRAHMAN KASSIM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Kullar, instructed by Aman Solicitors Advocates
For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Following a grant of permission to appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against the respondent's decision to remove him from the UK further to the refusal of his asylum and human rights claim, it was

found, at an error of law hearing on 20 February 2017, that the First-tier Tribunal had made errors of law in its decision. The decision was accordingly set aside on a limited basis.

2. The appellant is a citizen of Somalia born on 15 October 1969. He left Somalia on 25 November 2011 and arrived in the United Kingdom on 10 December 2013, after spending time in Turkey and travelling to Greece and France. He claimed asylum on 13 February 2014. His claim was refused on 9 February 2015 and a decision was made by the respondent on the same day to remove him from the United Kingdom. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal by Judge Alis on 9 June 2016 and was dismissed in a decision promulgated on 10 June 2016. Permission to appeal to the Upper Tribunal was granted on 27 July 2016. At an error of law hearing on 20 February 2017, Upper Tribunal Judge Storey found that Judge Alis had made an error of law in his decision such that the decision had to be set aside and re-made by the Upper Tribunal, but on a limited basis and a narrow point.

The Appellant's claim

3. The basis of the appellant's claim is that he fears persecution on return to Somalia from Al-Shabab. He is a member of the minority Reer Hamar clan. His family's shops in Hamar Wayne were looted and confiscated by Al Shabab during the civil war in 1991 and in 1997 his family moved to Hudur. In July 2011 two Al Shabab militias approached him and asked him to fight for them, but he refused. He then decided to leave Somalia two weeks later. He feared he would be recruited to fight with Al Shabab if he returned to Somalia and that he would be destitute.

4. The respondent, in refusing the appellant's claim, accepted his claimed nationality and ethnicity and accepted his account of being asked to join Al Shabab, but did not accept that he would be at risk on return to Somalia. The respondent considered that the appellant could relocate to Mogadishu as Al Shabab did not have any significant presence there at present and that he would be of no specific interest to Al Shabab. There was no clan violence in Mogadishu and no clan based discrimination, even for minority clan members. The respondent considered that the appellant's past experiences of work in Somalia and his current support mechanisms would assist him in re-integrating in Somalia. He would be able to access medical treatment in Somalia. The respondent concluded that the appellant was not entitled to humanitarian protection and that his removal would not breach his human rights.

5. At the hearing of the appeal against that decision, Judge Alis heard from the appellant, who said that he feared being forced to fight with Al Shabab if he went back to Somalia and feared that he would be unable to find work and would become destitute. He claimed that his sister and brother-in-law could not assist him financially because his sister did not work and her husband had a low paid job. He claimed that his family had left Somalia and had gone to Yemen and had found that out from his sister that morning. He did not know what had happened to the family friend who funded his trip out of Somalia. His wife was living in Greece. He had various medical conditions for which he was taking

treatment. The judge considered that the evidence before him did not suggest that the appellant's medical condition crossed an Article 3 or 8 threshold and neither did it support the submissions that he could not work in Somalia. The judge did not find the appellant's account about the whereabouts of his family to be credible and did not accept that they had fled to Yemen. The judge found that the appellant had a family home available in Somalia and did not accept that he had lost contact with the person who had paid for him to come to the UK. He did not find that the appellant fell into one of the risk categories in MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442 and did not accept that he was at risk of persecution or that he was entitled to humanitarian protection and he considered that his removal to Somalia would not breach his human rights under Article 3 and 8 of the ECHR. He accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

6. Permission to appeal against that decision was sought on the grounds that the judge's assessment of the appellant having family to return to in Mogadishu was flawed and that he had not fully considered the appellant's family and private life in the UK.

7. Permission to appeal was granted on 27 July 2016.

8. At the error of law hearing UTJ Storey found the judge's determination to be materially flawed on one particular aspect. He found no error of law in the judge's adverse credibility findings in regard to the appellant's claim that his family had fled to Yemen and he upheld the judge's decision in so far as he found that the appellant's family remained in Somalia. However UTJ Storey found that the judge had erred by failing to consider whether the appellant fell into category (xii) of MOJ, on the basis that the respondent had accepted that the appellant's family did not live in Mogadishu and that the appellant would be relocating to Mogadishu where he had no family and no home. He set aside the judge's decision and directed that it would be re-made, at a resumed hearing, on the limited basis of considering evidence from the appellant's sister as to whether she would be able to support him if he was to be returned to Mogadishu, in the context of paragraph (xii) of MOJ.

Appeal hearing and submissions

9. The appeal then came before me on 15 May 2017. The appellant produced a statement for the hearing in which he stated that his sister was unwilling to offer him financial support as she could barely make ends meet herself and was in receipt of state benefits. The appellant referred to evidence he was submitting to support his claim that his mother, two sisters and his two children were living in Yemen. The appellant did not give oral evidence before me.

10. The appellant's sister, Eslah Abdirahman Kassim, gave oral evidence and adopted her statement of 2 May 2017, in which she stated that she could not provide her brother with financial support as her husband was unwilling to do so given that they were barely surviving and were in receipt of benefits. She stated further that there were no relatives in

Somalia who could support him and that their surviving family had fled to Yemen and lived in Basateen in the south of the country.

11. In her oral evidence Ms Kassim adopted her statement and confirmed that she could not support her brother financially as her husband worked only part time and they had six children to support, one of whom was going to university and another to college. She said that she came to the UK in March 2006 with two of her children, to join her husband. She had lived in the Shibs district in Mogadishu before joining her husband and his family in Yemen. She went to Yemen in around 2000 and prior to that lived in Mogadishu, although she had to flee from place to place outside the village. Ms Kassim said that the pictures she had produced showed her family in Yemen. Her sister had sent the pictures to her two to three weeks ago. She said that the appellant could not return to Somalia and find work there because his life was in danger from Al Shabab.

12. Both parties made submissions. Ms Pettersen submitted that, given that Ms Kassim had lived in Mogadishu for many years before going to Yemen it may well be that there was more family there than she and the appellant were admitting to. There was no evidence that the people in the pictures were the appellant's family members. The appellant had family links and other ties to Mogadishu. There was no reason why the appellant could not get a job there and support himself. He did not fall within the risk factors in MOJ. Ms Kullar submitted that the evidence should be accepted that the family had all fled to Yemen. The appellant's sister was not in a position to provide support. The appellant fell within the risk factors in MOJ and the appeal should be allowed.

Consideration and findings

13. I set out the relevant passages of the headnote of MOJ 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.

(viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.

(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.*

(xi) *It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.*

(xii) *The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards."*

14. In his decision setting aside the First-tier Tribunal Judge's decision, Upper Tribunal Judge Storey considered that an error of law had arisen as a result of the judge's failure to consider Mogadishu as a place of internal relocation and thus to consider (xii) of the head-note. I have therefore considered the position on return for the appellant in line with the guidance in that paragraph. Although the direction given for the appellant's sister to provide evidence of her circumstances was essentially to establish whether or not she would be able to provide financial support for the appellant from the UK, it seems to me that her evidence raised further issues as to the appellant's links to Mogadishu. On the basis of the appellant's evidence that he had left Mogadishu for Hudur in 1997 it was accepted that there was no family living in Mogadishu and I do not go behind that finding with respect to immediate and close family members. However I do not accept that the appellant has no former, or even current, links to the city at all and I make that finding on the basis of Ms Kassim's evidence.

15. What became clear from Ms Kassim's evidence was that she had lived in Mogadishu from birth in 1976 until some time after her marriage and the birth of two of her children, when they joined her husband's family in Yemen in approximately 2000, which clearly suggested that there had been family links to that city for many years, contrary to the situation previously portrayed by the appellant. I found Ms Kassim to be particularly evasive when asked about her residence in Mogadishu and her departure for Yemen. She

initially stated that she had lived in Shibs district in Mogadishu prior to coming to the UK, but then clarified that she lived there until she left the country for Yemen. When asked to confirm her evidence that she had stayed in Mogadishu from 1976 until 2000 she said twice that she did not understand what was meant by that question. After confirming that she had lived there until her departure for Yemen she then added that she had moved around from place to place, but her evidence was nevertheless that she had lived in Mogadishu before departing from Somalia. There was no question about any problems in interpretation and the question was clearly and simply put to her by Ms Pettersen. I find myself in agreement with Ms Pettersen that there may well be more family and other links to Mogadishu than the appellant and his sister were admitting to and that Ms Kassim was being deliberately evasive.

16. In the circumstances I do not find, even to the lower standard of proof, that I have been provided with a truthful account of the family's lack of ties to Mogadishu and neither do I accept that the pictures of a group of people outside Basateen Medical Centre undermines Judge Alis' findings, as upheld by Judge Storey, that the appellant's account of his family having fled to Yemen was untrue. It may well be that the appellant no longer has close family members living in Mogadishu, as Judge Storey accepted in his decision, but I do not accept that he has no former links to that city, in terms of family friends and contacts or even more distant family. As such he does not fall within the risk factors in (xii). Furthermore, whether or not the appellant's sister is unable to provide him with financial assistance, there is no evidence, medical or otherwise, to show that the appellant would be unable to find work in Mogadishu. When asked whether there was any reason why he could not find work, his sister's evidence was that there was not, but that the issue was not whether he could get a job, rather that he could not work because of the danger from Al Shabab. However Judge Alis' findings that the appellant would not be at risk on that basis have been upheld by Judge Storey. Accordingly it seems to me that there is no reason why the appellant could not find some unskilled work in Mogadishu. The guidance at (x) and (xi) is relevant in that respect and there is nothing to suggest that that only applies to former and recent residents of Mogadishu to the exclusion of those relocating to Mogadishu. As for the ability of the appellant's sister to assist him financially, I do not accept that the evidence provided shows that she would not be able to at least provide some initial assistance until he obtained employment. I note that the evidence of her finances was incomplete as it did not include her husband's bank statements so as to provide an oversight of the family's financial situation as a whole. Given the evasive nature of her evidence I am not prepared to accept her oral evidence alone as reliably demonstrating an inability to assist the appellant to that limited extent.

17. Accordingly I do not consider that the appellant would find himself destitute on return to Somalia, to Mogadishu, and I do not accept that he falls within any of the risk factors in MOJ. I do not find that he has been able to demonstrate, to the lower standard of proof, that he would be at risk of persecution, that he would be subjected to an Article 15(c) risk or face a real risk of destitution, or that his human rights would be breached if he returned to Somalia. Accordingly I dismiss the appeal on all grounds.

DECISION

18. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. I re-make the decision by dismissing the appellant's appeal on asylum, humanitarian protection and human rights grounds.

Anonymity

The First-tier Tribunal made an anonymity order. I see no reason to continue that order and note that Judge Storey did not make an anonymity direction. I formally discharge the order of the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read 'Kebede', is written over a light blue rectangular stamp.

Dated: 17 May 2017

Upper Tribunal Judge Kebede