



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

Appeal Number: PA/07144/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 29 November 2017**

**Decision & Reasons
Promulgated
On 14 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bahja, Counsel, instructed by Lords Solicitors LLP
For the Respondent: Mr Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, who is accepted by the Respondent to be a citizen of Somalia, entered the UK unlawfully and claimed asylum on 13 January 2016 with the help of his local Social Services team from whom he had sought protection and support as a child. The Respondent refused the protection claim on 24 June 2016 and the Appellant duly appealed against that decision to the First tier Tribunal. His appeal came before Judge Nolan at Taylor House on 19 June 2016, and it was dismissed on all grounds in a decision promulgated on 3 July 2017.

2. In the course of her decision it is plain that Judge Nolan failed to grapple with the disputed issue of the Appellant's clan membership. That is only one of a number of challenges advanced by the Appellant towards this decision in the course of seven grounds to the application for permission to appeal which themselves extend over a large number of pages. The challenges to Judge Nolan's decision were initially dismissed by the First-tier Tribunal on consideration of the application for permission to appeal as mere disagreements with that decision, but when those grounds were renewed upon an application for permission to the Upper Tribunal, Upper Tribunal Judge Plimmer accepted on 20 September 2017 that they did raise an arguable case. Thus the matter comes before me.
3. Having considered the decision with the assistance of both representatives this morning it is plain that Upper Tribunal Judge Plimmer's analysis of the challenges raised against the Judge's decision was the correct one. Although the Respondent had accepted that the Appellant was a national of Somalia she had accepted nothing else of his case beyond his claimed name and date of birth. Even when the decision is read as a whole and having given the Judge the greatest leeway in terms of analysis of its content, I am unable to identify any finding of fact that results from an adequate analysis of the evidence as to what the Appellant's true clan membership is.
4. It follows that the rest of the Judge's analysis of the evidence is infected by a failure to start from the correct point. It also follows that the analysis of the application of the current country guidance in MOJ & Ors (Return to Mogadishu) Somalia (CG) [2014] UKUT 442 is necessarily likewise flawed. The flaws are not cured by the Judge's references to K.A.B. v. Sweden in the European Court of Human Rights, No 886-11, September 2013, or Sufi and Elmi v. the United Kingdom.
5. Put shortly, the assessment of whether the Appellant was at risk in his home area is inadequate. There is also no adequate analysis of whether the Appellant could safely travel from the point of return at Mogadishu Airport to his home area, and no adequate analysis of whether he could reasonably be expected to internally relocate within Mogadishu, taking advantage of the economic opportunities that the current country guidance concludes are available to those returning to Somalia from Western Europe. Thus there is no adequate analysis of whether in fact the Appellant would be forced into residence in an IDP camp on the outskirts of Mogadishu and reduced to conditions of destitution which would engage with his Article 3 rights.
6. That being the case, both parties are agreed that the only course available to me is to remit the appeal to the First-tier Tribunal for rehearing with no findings of fact to be preserved. That is the course I shall take. The decision discloses a material error of law that requires it to be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. 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 her 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 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. Having reached that conclusion, with the agreement of the parties I make the following directions;

- i) The appeal is to be relisted for rehearing at Taylor House.
- ii) A Kibajuni interpreter should be booked for that hearing and the hearing can be listed on the first available date. No additional evidence is expected to be filed, and so the matter can be listed at short notice.

Notice of decision

7. The decision promulgated on 3 July 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo with the directions set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge J M Holmes