



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

Appeal Number: RP/00137/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 18 October 2017**

**Decision and Reasons
Promulgated
On 30 November 2017**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**OMAR MOHAMED ADAN
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant:

Mr J. Collins, Counsel instructed by Sentinel Solicitors

For the respondent:
Officer

Mr E. Tufan, Senior Home Office Presenting

DECISION AND REASONS

1. The appellant appealed against the respondent's decision to refuse a human rights claim and to revoke refugee status in the context of deportation proceedings.

2. First-tier Tribunal Judge Cameron dismissed the appeal in a decision promulgated on 20 July 2017. The judge was satisfied that the appellant had rebutted the presumption that he is a danger to the community. He did not uphold the certificate made under section 72 of The Nationality, Immigration and Asylum Act 2002 (“NIAA 2002”). The judge found that the appellant would not be at risk on return to Mogadishu as a minority clan member and that he would be able to reintegrate with the assistance of family and clan members. The judge concluded that the public interest in deportation outweighed the substantial private life the appellant had established in the UK.
3. The appellant appeals the First-tier Tribunal decision on the following grounds:
 - (i) The judge was wrong to refer to paragraph 399A of the immigration rules, which only applied to revocation of protection status where the asylum application was made on or after 21 October 2004: see *Dang (Refugee – query revocation – Article 3)* [2013] UKUT 00043.
 - (ii) The judge erred by placing too much weight on the evidence given by the appellant’s ex-wife in a previous application when she did not give evidence at the hearing and her evidence could not be tested.
 - (iii) In assessing the reliability of information contained in the pre-sentence report the judge failed to take into account the circumstances in which the interview took place, which included the use of an Arabic rather than a Somali interpreter.
 - (iv) The judge failed to conduct an adequate fact sensitive analysis of the circumstances the appellant would face on return to Mogadishu or of the background evidence, which indicated that the situation might have deteriorated since *MOJ & Ors (return to Mogadishu) Somalia* [2014] UKUT 00442 was decided.
4. I have considered the grounds of appeal and the submissions made by both parties before coming to a decision in this appeal.

Decision and reasons

5. The two main points argued on behalf of the appellant at the hearing were (i) the judge’s findings relating to the likelihood of the appellant having family members in Somalia were unsustainable and in turn that impacted on the subsequent assessment of Article 3 risk if returned to Mogadishu as a minority clan member; and (ii) in any event, the judge failed to give sufficient scrutiny to the appellant’s individual circumstances in assessing the Article 3 risk in Mogadishu.
6. It was open to the judge to consider the evidence given by the appellant’s wife when she was interviewed in relation to her asylum claim in 2001. It

appears that her account was accepted and it was on that basis she was recognised as a refugee. The judge was entitled to take into account the fact that the appellant's account differed in two material respects. Firstly, that he left Mogadishu in 1994 when she said that the family fled to Kenya after an attack in 2001. Secondly, that the appellant's brother was killed in 1994, when his wife said that it was his brother who helped to finance her travel to the UK in 2001. The judge gave some consideration to whether she might fabricate aspects of her claim, but concluded that there was no reason why she would do so.

7. However, if the appellant's evidence was taken at its highest the family fled Mogadishu for Kenya in 1994, and were resident there for some years before raising the funds for his wife to leave in 2001, there might be a motive for the appellant's wife to exaggerate the claim in relation to the last incident in 2001 to give a contemporaneous reason for claiming asylum even if she had suffered past-persecution in Somalia. The judge did not appear to consider what weight could be placed on discrepancies between two sets of evidence when the evidence of one person could not be tested in cross-examination. The fact that her account was accepted at the time was a matter that could be considered, but there is nothing to suggest that the judge approached the discrepancies with caution given that the appellant's former wife was not available to give evidence.
8. My observations about the judge's approach to the discrepancies with the wife's earlier account do not, taken alone, amount to an error of law. However, other concerns have been raised about the assessment of the evidence relating to the likelihood of the appellant having family members in Mogadishu who could assist him.
9. The judge appeared to place undue weight on information relating to the appellant's family circumstances contained in the Pre-Sentence Report. First, the context of the report was to recommend appropriate sentencing. The role of the probation officer was not to take a detailed family history. Second, the judge accepted that there were "clear factual errors" in the report and knew that an Arabic interpreter was used thereby clearly giving rise to the possibility of misunderstanding. Third, the ages of the children that the appellant was said to have in Somalia did not accord with his immigration history in the UK. While it was open to the judge to note that it was difficult to see how the probation officer would have obtained the information except from the appellant, given his recognition that there were clear factual errors in the report, the information was at best unclear and unreliable and little weight could be placed on it.
10. Even if those findings relating to the appellant's family situation were sustainable he failed to go on to consider whether the appellant's claim that he had no family members who could assist him in Mogadishu nevertheless was capable of belief on the low standard of proof at the date of the hearing. At highest, the evidence given by the appellant's wife in her asylum statement in 2001 stated: "*My husband's brother had some*

money. He agreed to assist us. He only had enough to pay for one of us to get to a safe country. I was chosen to go because I was most at risk". She did not say where his brother was living or whether he fled Mogadishu with other members of the family. This comment followed a description of the family fleeing from Mogadishu to Mombasa. The chronology suggested that he paid an agent when they got to Kenya not before they left Mogadishu. It appears that the judge extrapolated from this limited information that it was likely that the appellant's brother was living in Mogadishu. At its highest the evidence only suggested that he might have been there in 2001. The evidence needed to be assessed at the date of the hearing in 2017, some 16 years later, at which point there was no evidence to indicate that the appellant's brother was likely to be living in Mogadishu. Even taking into account his former wife's evidence there was little reason to doubt the appellant's claim that he had no relatives there who would be able to assist him.

11. Those matters form part of my assessment of the First-tier Tribunal decision. The combination of those points and the First-tier Tribunal's subsequent findings relating to risk on return to Mogadishu lead me to conclude that the decision contains errors of law.
12. The judge clearly was aware that the appellant is from a minority clan. He referred to the country guidance in *MOJ (Return to Mogadishu) Somalia* CG [2014] UKUT 00442 and made specific reference to what was said about clan support at sub-paragraph (viii) of the headnote [127]. The judge accepted that minority clans would be able to provide little assistance [130]. The judge found that the appellant would be able to work despite the injury to his leg [131]. Although he accepted that the appellant's brother in law could provide support without much impact on the family budget in the UK, he concluded that his brother in law would be able to provide support if the appellant returned to Mogadishu [136]. He concluded that the appellant would be able to obtain some financial assistance from relatives in the UK and might be able to obtain some assistance from clan or family members in Mogadishu. Notwithstanding his medical issues the judge was satisfied that the appellant would be able to work to support himself in Mogadishu [140].
13. However, it is unclear on what basis the judge concluded that "It is however clear that some assistance can still be provided" by minority clan members when the Tribunal in *MOJ* made clear in sub-paragraph (vii) that: "such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer." The guidance the judge outlined at sub-paragraph (viii) about the potential support mechanisms provided by other clan members was prefaced with what was said about the inability of minority clans to offer any meaningful assistance.
14. Having placed reliance on the Pre-Sentence Report despite the "clear factual errors", the judge failed to take into account the fact that the appellant was said to have been in receipt of Incapacity Benefit since 2003

and was medically unfit for work. While it was open to him to consider the fact that the appellant's brother in law has accommodated him in the UK no analysis was undertaken as to whether the level of support would be sufficient to provide any meaningful remittances. His brother in law supports a family with seven children and was said to have given only token amounts of money to the appellant in the UK.

15. This is a finely balanced decision. I bear in mind that a protection and human rights claim must be given anxious scrutiny because of the potential risk on return. Although many of the judge's findings were entirely open to him to make other findings were made without reference to material evidence or without adequate regard to the relevant guidance on the conditions that minority clan members might face in Mogadishu. For these reasons, I reluctantly conclude that the decision contains material errors of law and that it must be set aside.
16. Given that the concerns relate to the findings of fact made by the First-tier Tribunal the evidence will have to be considered afresh. As such, it is appropriate to remit the appeal to the First-tier Tribunal for a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error of law

The decision is set aside and the appeal remitted for a fresh hearing

Signed  Date 29 November 2017
Upper Tribunal Judge Canavan