



**Upper Tribunal
(Immigration and Asylum Chamber)
RP/00146/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

Decision & Reasons

On 24 April 2017

Promulgated

On 16 May 2017

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

AA

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F. Clarke, Counsel instructed by Fadiga & Co
For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Somalia born on 1 June 1990. He arrived in the UK on 5 February 2010 in order to join his mother who had been granted refugee status. Ultimately, he was granted indefinite leave to remain on 31 December 2012.

2. In consequence of his criminal convictions, a decision was made on 22 October 2015 to make a deportation order against him. Subsequently, on 9 May 2016, a decision was made to revoke his refugee status pursuant to Article 1C(5) of the Refugee Convention (reasons for refugee status ceasing to exist).
3. The appellant's appeal against those decisions came before First-tier Tribunal Judge L. Murray ("the FtJ") on 1 February 2017. She concluded that the respondent had discharged the burden of proof in relation to Article 1C(5) and that the appellant was not otherwise at risk of persecution on Refugee Convention grounds. She also dismissed the appeal on humanitarian protection grounds and with reference to Articles 3 and 8 of the ECHR.
4. The appellant appealed against the decision of the First-tier Tribunal ("FtT") on five grounds, but permission was only granted in respect of ground 3. However, for context I summarise all of the grounds.
5. It is argued in ground 1 that the FTJ was wrong to consider the appellant's membership of the Reer Hamar clan and his vulnerability due to his mental illness together, in the assessment of whether he would be persecuted on return and whether the respondent had discharged the burden of proof in relation to cessation of refugee status. Within that ground is a complaint about the FTJ's conclusions in terms of the availability of treatment in Somalia for the appellant's mental health.
6. Ground 2 asserts that the FTJ fell into error when she concluded that the appellant had not established that he was gay, and that accordingly he would not be at risk on that basis on return.
7. Ground 3 argues that the FTJ failed to take into account that the UNHCR, in a letter dated 2 August 2016, found that the respondent had breached her duty to the appellant because there was no evidence that on return he would be in receipt of remittances from family outside Somalia. Not only had the FTJ failed to take this into account, but she had in effect shifted the burden of proof onto the appellant in terms of his being able to secure access to a livelihood on return, and in relation to his living circumstances.
8. Part of the same ground argues that the FTJ's findings in that respect were perverse in the light of [39] of her decision, she having concluded that the appellant was vulnerable, being described in medical evidence as being "extremely fragile and vulnerable".
9. Again, within that ground it is said that whilst it was accepted that the appellant's father did not provide bank statements to support the contention that he could not provide for the appellant financially in Somalia, the FTJ had speculated that the family in the UK would be in a position to send him regular remittances and that he, in turn, would be able to secure employment there.

10. Ground 4 contends that the FTJ was wrong at [51] in terms of her conclusions on Article 3 of the ECHR, because the appellant's case was never put on the basis of poverty or deprivation, rather it was put on the basis of exceptional circumstances under Article 8 of the ECHR.
11. Ground 5 asserts an error on the part of the FTJ in terms of her assessment of the public interest considerations in removal. Having found that he was vulnerable and fragile, and suffering from a major depressive disorder and schizophrenia which would not be managed well in Somalia, it could not be said that his private life ties in the UK are not particularly strong. Those conclusions are also inconsistent with the finding that his family members in the UK would be able to send him remittances such that he would not have to live in an IDP camp. It is also argued within that ground that there was an error in the FTJ's conclusions with reference to paragraph 399A of the Rules.
12. As I say, permission was granted only in relation to ground 3.

Submissions

13. Ms Clarke argued that the question of remittances raised in ground 3 was linked to the appellant's mental health. It was submitted that there was no evidence that the appellant would have support in Somalia as the FTJ had found at [52]. I was referred to the appellant's father's witness statement at [12] in which he said that he was a pensioner and his income and that of his wife was hardly enough for them. He had said in the witness statement that he would not be able to support the appellant financially. Although the FTJ had said at [50] that no bank statements or other financial evidence had been provided by the family, this was because neither the appellant nor his father had been told that they needed to provide such evidence. At the time of the decision the appellant was in detention. His mental state was also a relevant factor in this respect. I was referred to some of the background evidence in relation to mental health provision in Somalia.
14. Mr Jarvis suggested that the submissions on behalf of the appellant went beyond the basis upon which permission was granted. The FTJ had applied the decision in *MOJ & Others (Return to Mogadishu)* CG [2014] UKUT 00442 and had applied the burden of proof correctly.
15. At [48] she had found that the evidence given to her had been inconsistent in terms of the amount of time the appellant had spent in Somalia. The appellant's father's evidence was that when they returned to Somalia in 2007 from Saudi Arabia they stayed in the house of very good friends in Mogadishu.
16. Mr Jarvis relied on the decision in *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49, in particular at [47] and [48], whereby the appellant in that case had not told the truth about his links and circumstances in Mogadishu and therefore the possibility that he was a

person with connections in Mogadishu could not be excluded. The appellant had not discharged the burden of proof.

17. Likewise, *AAW (expert evidence - weight) Somalia* [2015] UKUT 00673 (IAC) was relied on, in particular at [47], to the effect that it is for the appellant to explain why he would not be able to access the economic opportunities that have been produced by the economic boom in Mogadishu. In this case, the appellant had failed to make out his case. Furthermore, evidence could have been provided which was reasonably available.

Conclusions

18. To some extent the appellant's grounds merge, one into the other. However, it is clear from the grant of permission that the issue upon which permission was granted in relation to ground 3 was concerning the FTJ's conclusion that the appellant would be able to receive support in Somalia in the form of remittances from his family in the UK.
19. In order to explore the argument in ground 3 a little further, it is necessary to refer in more detail to the letter from UNHCR to the respondent concerning the proposed cessation of the appellant's refugee status, and to aspects of the respondent's decisions.
20. That letter is dated 2 August 2016. Materially, it states on page 7 that it was important for the respondent to establish whether the appellant has any remaining family ties or clan affiliation in Somalia, and refers to the need for a "robust assessment" of the impact of those issues on the question of protection on return. It refers to the need to assess the viability of those issues, particularly if the appellant has no immediate family or close relatives living in Somalia, and thus no support network available on return. Again, on page 8 it states that the respondent's view that the appellant would have sufficient connections to Somalia, including language and cultural background should he decide to move to Mogadishu, appeared to be speculative and that there were no "objective facts" that can be drawn upon to confirm those views. It is said that the respondent has not mentioned a "careful assessment" in line with *MOJ and Others* in terms of his personal circumstances. It refers to the respondent stating that it is not known if any of the appellant's extended family members remain in Somalia, and it suggests that consideration had not been given to the circumstances in Mogadishu prior to his departure or his access to financial resources. The respondent was urged to carry out such an assessment before coming to a decision about the appellant's refugee status.
21. Finally on this issue, it states on page 9 that to determine the appellant's case without the assessment referred to, considering all relevant information relating to his return, would result in the burden of proof in establishing the appropriateness of cessation not being fully discharged.

22. Although the appellant's grounds state that "the UNHCR found that the respondent had breached her duty" because there was no evidence that she had provided evidence that the appellant would be in receipt of remittances from family abroad, that is not actually what the UNHCR letter states. It is true however, that it does express concern about the need for individual assessment of his circumstances in the respects to which I have referred.
23. The argument in ground 3 also refers to the appellant's vulnerability and refers to the FTJ's conclusions about his mental state.
24. It is said in the grounds that whilst it was accepted that the appellant's father did not provide his bank statements, the FTJ had speculated in concluding that family members in the UK would be in a position to send him regular remittances, and that he, in turn, would be able to secure employment on return to Somalia.
25. The respondent's letter of 9 May 2016, headed "Notification of intention for the revocation of refugee status", and which preceded the UNHCR letter, referred to the appellant, his stepmother and her family having come from Mogadishu. It refers in detail to the decision in *MOJ and Others*, referring to there being no inter-clan violence taking place in Mogadishu. It refers to background material in relation to the Reer Hamar/Benadiri. It also refers to background information showing that the Reer Hamar in Mogadishu now have political positions within the transitional government and a number of key positions within regional administration of Benadir and local government of Mogadishu. It is said by the respondent that the appellant would be able to re-establish ties with his clan in Mogadishu and remain in their area as this was where he and his family resided before leaving Somalia.
26. After referring to guidance in *MOJ and Others* in terms of the individual assessment needed, the respondent went on to state that it was not known whether any of his extended family members remained in Somalia but it was considered that on his return "and with the assistance of family members abroad" he could re-establish contact with any relatives there and re-initiate access to his clan with whom his family is affiliated. It refers to the appellant being an adult, aged 25, having arrived in the UK aged 19. It is said that he had shown the ability to assimilate in a foreign country and culture and that therefore any difficulties he may encounter on return to Somalia could be overcome given that he remained familiar with the culture and language of Somalia. Furthermore, any skills or qualifications, including academic ones, could transfer with him on his return and assist in re-integration.
27. The medical evidence in relation to the appellant's mental state, and background material, is also dealt with.
28. The revocation of refugee status letter dated 2 September 2016 refers to the appellant having been provided with an opportunity to submit representations in support of his continuing entitlement to refugee status.

It states that no representations in that respect were received. The letter refers to the UNHCR letter.

29. The actual decision to revoke protection status and refuse a human rights claim, dated 18 October 2016, again refers to the UNHCR's letter and the points raised in it. It refers to the burden of proof being on the respondent in terms of cessation of refugee status but reiterates the assertion that the appellant could re-establish ties with his clan in Mogadishu.
30. So far as the decision of the FTJ is concerned, there is no room for argument in relation to the FTJ's findings in terms of the appellant's assertion that he would be at risk of persecution on account of being gay. Permission was refused in that respect.
31. Likewise, insofar as any of the grounds criticised the FTJ's assessment of the evidence in relation to the appellant's mental state and the extent to which that would result in persecution or Article 3 ill-treatment on return, permission was also refused. The FTJ's assessment of those issues is free from any error of law.
32. Specifically in relation to the issue of the extent to which the appellant would be able to be provided with remittances from the UK, at [50] the FTJ referred to it being the appellant's case that he would not be in receipt of remittances from the UK because his father was a pensioner and his siblings students. Clearly therefore, the FTJ appreciated the basis of the appellant's case in this respect. She referred to the appellant's stepmother as not having given evidence, and there being no witness statement from her. She referred to [12] of the appellant's father's witness statement, to which I was also referred in submissions, to the effect that his wife's income is hardly enough for them to get by. She then stated as follows:

"However, there are no bank statements or any financial evidence showing that the family do not have access to sufficient funds to provide remittances to the Appellant were he to return to Somalia. In the absence of such evidence I do not accept their assertions that they would not be able to send him funds on return. Further the Appellant has worked as a sales assistant in the past from 2011 to 2012. He speaks Somali and although he has now been absent from Somalia since 2010 on my findings was an adult when he left".
33. On the appellant's behalf the assertion had been made that no financial support could be expected from family in the UK because of a lack of funds available. However, that assertion was not made good in terms of the evidence put before the FTJ. She was entitled to take into account the lack of supporting evidence in terms of bank statements or other financial evidence.
34. It is also to be borne in mind that the FTJ also found that credible evidence had not been given in relation to when the appellant was last in Somalia. She referred to the dates and details having been "entirely inconsistent" [49]. In that same paragraph she concluded that the appellant and his

father were not telling the truth about their connections in Somalia and said that she did not accept that they do not have family and friends there. She concluded that the appellant would not be without clan support or the support of relatives and friends on return.

35. Not only are those conclusions relevant to her assessment of the appellant's claim that there would be no financial remittances to be expected from the UK, they were also relevant to the extent to which the appellant could expect support from other sources in Somalia.
36. Likewise, at [52] she concluded that because he would not be without support on return, it was not the case that he would be unable to access the medication that he requires for his mental health. She linked those findings to the conclusion that the appellant had not established that he would end up in an IDP camp or face destitution. Those conclusions were linked to the Article 3 aspect of the appeal.
37. It is not the case that the mere fact that the FTJ found that the appellant had not provided sufficient evidence to establish that financial support would not be forthcoming from the UK, meant that there was any reversal of the burden of proof in relation to cessation of refugee status, that burden lying on the respondent. As a matter of principle, it cannot be the case that because the overall burden of proof is on the respondent she therefore has to prove every fact in issue in relation to revocation of refugee status. Provided it is appreciated where the overall burden of proof lies, the appellant can reasonably be expected to adduce evidence of facts that he asserts, or relies on.
38. When dealing with Article 8, in the context of deportation, she referred to the fact that the appellant had only been in the UK for a relatively short period of time, but accepting that his immediate family were all in the UK. She found however, that he did not enjoy family life with them "for the purposes of Article 8 as there is no evidence of dependency over and above the normal ties". She found that he has some private life ties with his father and siblings, although it was not clear what the position with his stepmother was as she did not give evidence or provide a witness statement, the FTJ said. She referred to medical evidence to the effect that the appellant was living with friends on the streets and his relationship with his family had broken down. In consequence, she stated that she did not accept that his relationships with his family "are currently strong". She found that his private life ties in the UK are not "particularly strong" and that the public interest in removal was not outweighed by his Article 8 private life.
39. I mention that aspect of the FTJ's decision given that the matter is referred to in the grant of permission, which is drawn from ground 5, in respect of which permission was actually refused. That aspect of ground 5 however, is again concerned with the issue of remittances.
40. I consider that it was perfectly legitimate of the FTJ to conclude that the appellant's relationship with his family in the UK was not such as to

amount to family life for the purposes of Article 8. Even though she concluded that his relationships with his family are not currently strong, that is not inconsistent with her conclusion that the family would be in a position to provide support in the form of remittances. After all, it was not asserted that the family would not be willing to provide him with financial support, but that they would be unable to. As indicated, the FTJ did not accept that evidence.

41. It is not the case that the mere fact that the FTJ found that the appellant had not provided sufficient evidence to establish that financial support would not be forthcoming from the UK, meant that there was any reversal of the burden of proof in relation to cessation of refugee status, that burden lying on the respondent. As a matter of principle, it cannot be the case that because the overall burden of proof is on the respondent she therefore has to prove every fact in issue in relation to revocation of refugee status. Provided it is appreciated where the overall burden of proof lies, the appellant can reasonably be expected to adduce evidence of facts that he asserts, or relies on. [Move this paragraph]
42. In summary, I am not satisfied that the FTJ erred in law in the respects contended for. Her decision reveals a careful and thorough assessment of all the evidence within a correct appreciation of the relevant legal framework, in particular including with regard to the burden of proof.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal on all grounds therefore stands.

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.