



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

Appeal Number: RP/00167/2016

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 8th August 2017**

**Decision Promulgated
On: 9th August 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

[M S]

~~(no anonymity order made)~~

Respondent

Representation

**For the Appellant:
Officer**

Mr Harrison, Senior Home Office Presenting

For the Respondent: -

DETERMINATION AND REASONS

1. The Respondent, [MS], is a national of Somalia born on the 2nd October 1979. On the 20th February 2017 the First-tier Tribunal (Judge M. Davies) allowed his deportation appeal. The Secretary of State now has permission¹ to appeal against that decision.
2. The background facts are these. [MS] arrived in the United Kingdom

¹ Permission was granted by the First-tier Tribunal (Judge Easterman) on the 26th May 2017

in 1995, when he was 15 years old. His father had been recognised as a refugee and [MS], his mother and siblings were given leave to enter in order to facilitate the reunion of the family. [MS] was granted refugee status and 'indefinite leave to remain' in line with his father on the 21st April 1997. Between 2004 and 2010 [MS] was convicted of a number of different offences, none of which resulted in a custodial sentence. On the 14th February 2012 however, he received a sentence of 32 months imprisonment for the offences of robbery and possession of an imitation fire-arm. As a result, he was notified of his liability to deportation on the 26th April 2012. He made various submissions in respect of his position in the UK, notably placing reliance upon Article 8 ECHR.

3. These submissions were rejected. The Secretary of State noted that s32(5) of the UK Borders Act 2007 required [MS]'s deportation, unless he could demonstrate that one or more of the exceptions set out in s33 of the Act applied. Finding that none of them did, the Secretary of State signed the order on the 30th November 2016.

4. On appeal the matters to be decided were therefore:

i) Whether the exception at s33(2)(a) applied, i.e. would the deportation breach the UK's obligations under the European Convention on Human Rights? In the case of [MS] that required the Tribunal to consider whether his removal to Somalia would:

a) engage Article 3

b) be a disproportionate interference with [MS]'s family and private life, as protected by Article 8. This would require consideration of paragraphs 398-399A of the Immigration Rules.

ii) Whether the exception at s33(2)(b) applied, ie would the deportation breach the UK's obligations under the Refugee Convention. Because [MS] had already been recognised as a refugee that required the Tribunal to:

a) Determine whether [MS] had rebutted the presumption at s72 of the Nationality, Immigration and Asylum Act 2002. If he could not, then his status would not prevent his *refoulement*, in accordance with Article 33(2) of the Refugee Convention.

b) The Secretary of State further argued that even if the presumption in s72 was rebutted, the circumstances in connection with which [MS]

had been recognised as a refugee had ceased to exist in Somalia and his protection status should therefore be revoked.

5. In relation to those matters the First-tier Tribunal found as follows. It was found that the Secretary of State had not carried out a proper 'best interests' assessment in respect of [MS]'s three children and as such the decision - in respect of both the Refugee and Human Rights Conventions - was 'not in accordance with the law'. The Tribunal held that the presumption in s72 is rebutted because [MS] does not and will not in the future constitute a danger to the community. No finding is made on the cessation argument put in the refusal letter. Nor is any finding made on Article 3.
6. The grounds are lengthy and detailed but can be distilled to two points: the Tribunal failed to apply the correct legal framework, and failed to give adequate reasons for its findings. I need not address each and every point in the grounds since I find that both of these central criticisms are made out.
7. The legal framework that should have been applied in this case is that set out above at paragraph 4.
8. The starting point on Article 8 should have been paragraphs 398-399A of the Rules. The fact that it would be contrary to the best interests of [MS]'s children if he were to be removed is not a question posed in those rules. The Tribunal was required to consider whether his deportation would have *unduly harsh* consequences for his children. That question was not answered in this determination. Turning to private life, it does not appear to be in dispute that [MS] has lived lawfully in the United Kingdom since the day that he arrived in 1995. He would *prima facie* meet at least the first limb of paragraph 399A (20 years continuous residence) but no consideration has been given at all to whether he could meet the second (socially and culturally integrated in the UK) or third (no social, cultural or family ties to Somalia). The determination is therefore flawed for legal misdirection on Article 8, and for a failure to make relevant findings.
9. In respect of the protection aspect of the claim the Tribunal did make findings to the effect that [MS] had rebutted presumption in s72, but no findings are made at all on Article 3 or whether [MS] would continue to face a real risk of harm. The Secretary of State for the Home Department had expressly invoked the cessation clause and she was entitled to have her argument considered. If [MS] is no longer at risk of harm in Somalia then the findings on s72 are otiose.
10. The grounds are made out and the decision is set aside in its entirety.

Decision and Directions

11. For the reasons set out above I am satisfied that the decision of the First-tier Tribunal contains a material error of law and it is set aside.
12. I was not asked to make an order for anonymity and on the facts of the case I see no reason to do so.
13. Given that the decision has been set aside in its entirety I consider it appropriate, given the extent of the fact finding required, to remit this matter to be heard *de novo* in the First-tier Tribunal.
14. I am conscious that [MS] is without legal representation. He informed me that he is out of work and has no money to pay for a lawyer. He has not thus far been able to secure free legal advice. I agreed to facilitate a short delay in re-listing to enable [MS] to try and find a representative. As I explained at the hearing the law is complex, and both he and the Tribunal would benefit from submissions made by an immigration law specialist.
15. I direct that both [MS] and his father (who attended the hearing with him) submit signed witness statements explaining their remaining connections to Somalia, whether they have any relatives there etc. These statements should also explain why [MS] considers himself to be socially and culturally integrated in the UK. [MS] might also find it helpful to submit up to date evidence relating to his relationships with his children. This could include statements from the children themselves, from their mothers, and any other relatives/friends/professionals involved with the family such as teachers or social workers. These statements should be sent to the Home Office and the Tribunal no later than 7 days before the next hearing.

Upper Tribunal Judge Bruce
8th August 2017