



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

Appeal Number: PA/03148/2017

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

Promulgated

On 6 April 2018

On 10 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR S N H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran of counsel

For the Respondent: Ms Ahmad, a Home Office presenting officer

DECISION AND REASONS

Introduction

1. In this decision I will refer to the parties by their designations before the First-tier Tribunal (FTT).
2. The appellant is a citizen of Somalia who was born on [] 1983.
3. The appellant claimed that he was a refugee within the UN Convention relating to the Status of Refugees 1951 (Refugee Convention),

alternatively, that he would suffer inhuman and degrading treatment which would offend article 3 of that Convention if he were returned to Somalia. Further, or in the alternative, he claimed to be entitled to international humanitarian protection within paragraph 339 C of the Immigration Rules.

4. The respondent refused his application on 15th March 2017, but the appellant appealed to the First-tier Tribunal (FTT). His appeal came before Judge of the First-tier Tribunal Blake on 28 November 2017. Judge Blake allowed his appeal on human rights grounds and on asylum grounds but decided that the appellant did not qualify for humanitarian protection. His decision was promulgated on 14 December 2017.
5. The respondent appealed that decision to the Upper Tribunal and on 9th January 2018 First-tier Tribunal Judge Ransley considered his grounds to be at least arguable, pointing out that there appeared to be a failure on the part of Judge Blake to follow the leading country guidance case at that time of **MOJ** [2014] UKUT 442 (IAC). In addition, it was arguable that the appellant would not be at risk of serious harm if he returned to Mogadishu, from whence he came. Further or alternatively, it was arguable that Judge Blake had failed to have adequate regard to other country guidance material.

The hearing

6. At the hearing I heard submissions by both representatives.
7. The respondent argued that judge Blake has failed to engage with the country guidance case **MOJ & Ors (Return to Mogadishu) (CG)** [2014] UKUT 00442 (IAC). Had Judge Blake properly considered that case he would have noted that Al Shabaab had largely withdrawn from Mogadishu before 2014. He referred to the head note of **MOJ** and in particular (ii) – (iii) where it states that “ordinary civilian not associated with security forces or any aspect of government official administration or any NGO or international organisation on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as would require protection under Article 3 of the ECHR Article 15 (c) of the Qualification Directive”. Secondly, there has been a durable change in the sense that the Al Shabaab terrorists had withdrawn from Mogadishu completely and there is no real risk of them being re-established there.
8. Ms Ahmad submitted that the FTTJ judge had failed to engage on these points and had therefore made a material error of law. Having found at paragraph 113 that the appellant would probably be living in an IDP camp or makeshift shelter which would amount to “adverse living conditions”, Judge Blake ought to have concluded that the appellant would have been perfectly safe. Even taking account of the appellant’s own history and the fact that he did not apparently have close family to which he could turn, the Immigration Judge should have concluded that the appellant would not be at risk in Mogadishu. The Immigration Judge had failed to consider the

opportunities available to the appellant who may have had a wider family network to consider. In those circumstances there was no need for family members to be available to provide the appellant with support. The judgment failed to engage with these factors and circumstances decision contained a material error of law.

9. Ms Loughran on behalf of the appellant submitted that Judge Blake had engaged with the case of **MOJ**, as he demonstrated at several points in his decision. He also fully considered article 3 of the ECHR, as can be seen from paragraph 113 of his decision. However, the appellant's own story began after **MOJ** was decided. His account had been fully accepted by Judge Blake, who had indicated why he would be at particular risk on return. There were limited opportunities available to the appellant if he returned to Mogadishu, where he did not have a family support network in place. It was feared that the appellant may in fact be targeted given his recent history. No error in law had been demonstrated by the respondent, so the Upper Tribunal was invited to leave the decision of the FTT in place. Furthermore, a number of the paragraphs in the decision, the appellant's representative submitted, showed that the Immigration Judge had grappled with the issues. Thus, for example, details of the head note from **MOJ** appeared in paragraph 112 of the decision. I was then referred to that paragraph, where the Immigration Judge set out a number of paragraphs from the case of **MOJ** that he considered important. The Immigration Judge's decision should be left alone as, it was submitted, he had made clear findings.
10. The Respondent's representative did not exercise her right to have a reply to the appellant's submissions.
11. At the end of the hearing I reserved my decision as to whether there was an error of law and the correct means of disposal.

Discussion

12. It is alleged by the respondent that the Immigration Judge failed to have adequate regard to the recent decision of the Upper Tribunal of **MOJ & Ors**. The respondent says that the Immigration Judge failed to make an adequate assessment of risk or properly analyse the country guidance, particularly that contained in the above case. The Immigration Judge ought to have concluded that the appellant would now no longer be at risk from Al Shabaab, so that Mogadishu would be perfectly safe for him to live in. It is said that the Immigration Judge failed to give adequate reasons for his conclusions.
13. I have regard to the following findings by the Immigration Judge:
 - (i) The Immigration Judge found (at paragraph 100) that the appellant was a target for Al Shabaab and that his brother had been murdered by them;

- (ii) The Immigration Judge accepted the appellant's evidence as being "overall" credible, unlike the respondent, who found the appellant's account to be internally inconsistent and contradictory (see paragraph 63 and paragraph 78);
 - (iii) The Immigration Judge also accepted the evidence from the appellant's expert Miss Mary Harper, who opined that an individual who sells good to the Somali government would be likely to come to the attention of Al Shabaab;
 - (iv) The Immigration Judge found that the appellant would not be able to leave Mogadishu for other areas in Somalia because there was no safe route for him to travel to these areas (see paragraph 101);
 - (v) He found that the appellant had sold goods to the Somali government and other groups (paragraph 96 and paragraph 97);
 - (vi) More controversially, the Immigration Judge accepted submissions that since the country guidance case of **MOJ** there had been an increase in the amount of indiscriminate violence in Mogadishu;
 - (vii) The Immigration Judge quoted verbatim (ix) - (xi) from the head note of **MOJ** (at paragraph 112);
 - (viii) Crucially, the Immigration Judge found that the appellant did not enjoy any family support or anyone to whom he can turn on that form seems to have formed the basis of his conclusion that the appellant was likely to end up in an "IDP camp or makeshift shelter".
14. It is no function of this Tribunal's role to interfere with decisions of fact made after proper consideration of the evidence. In analysing the decision of the First-tier Tribunal it is necessary to ask, not merely whether this Tribunal would have reached a different conclusion (here, it may well have done) but whether the conclusions were reasonably open to the Immigration Judge on the evidence he heard? It is only if this question were answered in the negative that I would be able to find a material error of law such as might require this Tribunal to set aside the decision of the FTT.

Conclusions

15. I have carefully considered the submissions made on the respondent's behalf but consider the Immigration Judge made sufficiently clear findings on the facts for the respondent's appeal to amount to a disagreement with the ultimate conclusion, rather than to identify a clear error of law. In particular, the Immigration Judge found that the appellant had been a credible witness, that he had traded with the government and that the appellant did not have family members to whom he could turn in Mogadishu. His finding that the level of violence in Mogadishu had deteriorated is clearly controversial, although he cited some evidence in support. In my view, the Immigration Judge can be criticised for not

mentioning the appellant's clan membership or whether in fact the appellant would have been able to avail himself of the economic opportunities which, apparently, are available to returnees to Somalia. However, his findings in relation to the appellant's evidence, the expert witness evidence obtained on the appellant's behalf and the extent to which he had family to whom you could turn in Mogadishu, were findings that this Tribunal ought not properly interfere with. Accordingly, there was no material errors of law which would have been sufficiently material to justify interfering with the conclusion of the First-tier Tribunal.

Notice of Decision

16. The respondent's appeal is dismissed and I have decided not to interfere with the decision of the First-tier Tribunal to allow the appellant's appeal against the respondent's decision to refuse the appellant asylum and protection on human rights grounds in the UK.
17. An anonymity direction was made by the First-tier Tribunal and that anonymity is continued on the terms set out below.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 their 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 04 May 2018

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 04 May 2018

Judge Hanbury
Deputy Upper Tribunal Judge