



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10570/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26th March 2018

Decision & Reasons Promulgated
On 29th March 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

ABDI ABSHIR JAMA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, instructed by Elder Rahimi, solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. For reasons given in a determination promulgated on 29th November 2017, First-tier Tribunal Judge Doyle dismissed the appellant's appeal against the refusal of his protection claim.
2. Permission to appeal was sought and granted on 2 grounds;
 - (1) It was arguable the First-tier Tribunal judge made findings of fact against the appellant on the incorrect standard of proof namely a balance of probabilities rather than the lower standard applicable to protection claims and that there was no evidence that the appellant would be without minority clan support.
 - (2) The findings of fact regarding the availability of remittances from the UK, that he has close relatives upon whom he can rely for support and the potential of securing access to a livelihood were unreliable and based upon inadequate or lack of evidence considering his age, length of absence from Somalia, lack of contact with his wife and lack of previous employment.

Brief history

3. The appellant identifies as Reer Hamar, Bendabow, Aweys Khamiics. The respondent does not dispute this identification.
4. He arrived in the UK on 28th May 1998 and claimed asylum. His application was refused on third country grounds; he absconded. On 29th February 2008, he claimed asylum in a different name. His evidence is that he has a mother and two siblings living in Somalia, but not in Mogadishu. He had contact with his wife in July 2017 but at the date of his hearing before the First-tier Tribunal in November 2017 he said he had lost contact with her; she had been in Mogadishu for about 2 months, visiting her mother who was in hospital.
5. He has not worked whilst in the UK but has been supported by friends who have provided him with accommodation and financial support. A witness at the First-tier Tribunal hearing said he gave him about £80 per month.
6. The findings of the First-tier Tribunal that he does not have a genuine fear of being persecuted by Al Shabab; has not suffered ill treatment at the hands of the American forces and does not have a genuine fear of ISIS or the Somali government have not been challenged.

Error of law

7. The First-tier Tribunal judge's findings in so far as they are relevant to this appeal are as follows:

“14(n) it is accepted that the appellant returns to Mogadishu after a long absence, but on the appellant's own evidence he has close relative the city. On the appellant's own evidence, he has lived in the UK on the charity of friends. Those friends are in a position to send money to the appellant in Mogadishu if he needs when he's there. The appellant has a network of support both in the UK and Mogadishu. The submission that was made ignores the following guidance from *MOJ*

Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away; (xi) it will therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms;

14(o) The appellant is a member of a minority clan, but there is no reliable evidence from which I can make a finding that the appellant would be entirely without clan support. On the appellant's own evidence, he has family support in Somalia, and specifically within Mogadishu. The weight of reliable evidence indicates that the appellant is likely to receive remittances from London. There is no reliable evidence to indicate the appellant has no real prospect of securing access to a livelihood on return. Country guidance and the background materials indicate that jobs are available to returning Somali's. There is no reliable evidence which indicates that the appellant cannot work.”

8. The core guidance in *MOJ (return to Mogadishu) Somalia* CG [2014] UKUT 00442 (IAC) in so far as it impacts upon this appellant is as follows:
- (vii) *A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.*
- (viii) *The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.*
- (ix) *If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:*
- *circumstances in Mogadishu before departure;*
 - *length of absence from Mogadishu;*
 - *family or clan associations to call upon in Mogadishu;*
 - *access to financial resources;*
 - *prospects of securing a livelihood, whether that be employment or self employment;*
 - *availability of remittances from abroad;*
 - *means of support during the time spent in the United Kingdom;*
 - *why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*
- (x) *Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.*
- (xi) *It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.*
9. The underlying guidance from MOJ is that the appellant's circumstances must be looked at holistically, not issue by issue.
10. It cannot be sustainably argued that the judge applied the incorrect standard of proof. Whilst it is perhaps trite to say that it is difficult to prove a negative, it is the appellant's responsibility to provide at least some evidence that criteria are not met by him.
11. It is a fact that as a minority clan member, in the light of the guidance in MOJ, the evidence is that there would be some support available. The appellant did not put any evidence forward to contradict that approach. Mr Jarvis referred me to *AAW (expert evidence-weight) Somalia* [2015] UKUT 00673 (IAC) which was not before the First-tier Tribunal. That decision was reported by the Upper Tribunal in relation to expert evidence. It does consider the position of the Benadiri in Mogadishu but was not reported for that. Although that decision does consider evidence in relation to the

Benadiri and reaches conclusions that have not been the subject of appeal, I have not relied upon those findings in my assessment of the question whether there was an error in the First-tier Tribunal judge's finding regarding minority clan support in this appeal. It cannot be an error of law or an incorrect application of the standard of proof for the judge to state that there was no reliable evidence upon which to depart from *MOJ*. There was no evidence put forward.

12. *MOJ* refers to family members. It is correct that the appellant's mother and siblings are not in Mogadishu. His wife was certainly there although the appellant's evidence was that he lost contact with her after speaking with her in July 2017; his mother in law is in hospital there. The judge does not make a specific finding that he does not accept that the appellant has lost contact with his wife but states that his wife is in Mogadishu. The appellant's evidence was also that he was in internet communication with people in Somalia. It may of course be correct that as an individual visiting and staying with her mother the appellant's wife cannot provide support in the sense of financial and economic support. But it is not a question of whether there is an individual who can provide what an appellant is losing on leaving the UK but whether the existence of family members, whoever they are, are able to provide assistance. That assistance can be anything from financial assistance, accommodation or access to contacts. The appellant's mother in law is in hospital in Mogadishu. According to his evidence she has mental health problems but there was no indication how serious those are or how debilitating they are or what arrangements have been made for any continued stay there, who is paying for her stay or the whole myriad of questions that can arise. There is an absence of evidence. The appellant cannot rely upon an absence of evidence to support a contention that therefore there is a lack of support available. Even if the appellant's wife is no longer in Mogadishu, she was able to travel there, stay there, and her mother has been supported whilst in hospital. Whilst it is possible that the First-tier Tribunal judge should have provided more information for the basis of his findings, there can be no doubt but that the judge considered, reasonably, that the appellant's wife would be able to provide some assistance to him on relocation there. The appellant's evidence was that his wife had been in a refugee camp for many years. Yet from his evidence she travelled to Mogadishu and stayed there and he gave no evidence of any difficulties she had, even if he has now lost contact with her. That she could relocate there, even if no longer there, does not support the appellant's contention that he would not be able to do likewise. That he had been in contact with her, albeit he claimed he no longer had contact, does not undermine the finding that some support would be available
13. The appellant has been away from Mogadishu for some 25 years. He has not worked since he left Mogadishu and has been supported by friends and acquaintances. It does not appear to be his case that he cannot work and there was no evidence that he cannot work. For whatever reason, he does not work. He did not put forward any evidence that he would not be able to find employment in Mogadishu, in the context of the findings and guidance in *MOJ*. Although it was submitted that there was no evidence before the First-tier Tribunal that his friends and acquaintances would continue to support him in Mogadishu, there was no evidence that they would not. Again, the absence of evidence does not support a finding that it would not happen. The finding by the judge that there was no reliable evidence that they would not continue to support was a finding of fact that was open to him on the evidence before him. The question of the standard of proof does not even begin to be an issue in this context – there was nothing to say they would, not never mind why they would not.
14. *MA (Somalia)* [2010] UKSC 49 states
 - “47. In our view all that the AIT were saying at para 109 was that, because MA had not told the truth about his links and circumstances in Mogadishu, the possibility that he was a person with connections in Mogadishu could not be

excluded. In other words, he had not discharged the burden of proof which the AIT had correctly said rested on him. The fact that the AIT were considering the burden of proof is demonstrated by the last sentence of para 109: "Even though the appellant *has to prove* only a real risk...we cannot make the necessary findings when he will not tell the truth..." (emphasis added). So too at para 121 The third sentence says: "The burden is on the appellant and he has not told the truth about his links with Mogadishu..." Later in the paragraph, the AIT says that MA has told lies: "It does diminish his credibility and makes it harder for him *to prove* his case" (emphasis added)."

15. The judge in this appeal refers in paragraph 9 to the burden upon the appellant to prove his case; the judge refers repeatedly to the lack of evidence put forward by the appellant, characterising that lack of evidence as 'reliable' evidence. The use of the word reliable does not indicate a shift in the burden to a higher standard of proof being applied. It is reference to the lack of evidence that could, if it existed, result in a different conclusion.
16. The appellant has not provided any evidence that he would be unable to find employment or that he would not have financial support from those who have been supporting him for the last two decades. There was no need for the judge to make findings in connection with family members or clan support in Mogadishu. Even if the reasoning of the judge in connection with his wife is lacking in detail, the evidence before the judge was such that his findings regarding work and financial remittances are sound and properly and adequately reasoned.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal dismissing the appeal stands.

Date 27th March 2018



Upper Tribunal Judge Coker