



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01743/2020 (V)**

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 15 April 2021**

**Decision & Reasons Promulgated
On 27 April 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M J C
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Gardiner, instructed by Migrant Legal Project
For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

2. The appellant, who was born on 30 December 1996, is a citizen of Somalia. He arrived in the United Kingdom on 25 September 2017.
3. On 26 September 2017, the appellant claimed asylum. In a decision dated 20 December 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. The appellant unsuccessfully appealed that decision to the First-tier Tribunal. His appeal was dismissed in a decision promulgated on 11 March 2018 and permission to appeal was refused on 2 May 2018 and the appellant became appeal rights exhausted on 17 May 2018.
4. On 18 December 2019, the appellant made further submissions. In a decision dated 5 February 2020, the Secretary of State again refused the appellant's claims for asylum, humanitarian protection and under the ECHR.
5. The appellant appealed to the First-tier Tribunal. His claim was that he belonged to a minority clan, the Bajuni and sub-clan Khazraji. His home area was Koyama island. He claimed that he was at real risk of serious harm in his home area, as a minority clan member, from Al-Shabaab. Further, he claimed that he could not safely and reasonably internally relocate to Mogadishu.
6. In her determination sent on 5 October 2020, Judge M M Thomas allowed the appellant's appeal on humanitarian protection grounds and under Art 3 of the ECHR. However, she dismissed the appellant's appeal under the Refugee Convention.
7. In reaching those decisions, the judge accepted that the appellant was at real risk of persecution from Al-Shabaab as a member of the minority Bajuni clan in his home area, namely Koyama island - his home area being an Al-Shabaab stronghold (para 68). Secondly, the judge went on to find applying MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) that if he relocated to Mogadishu there was a significant risk that he would be destitute and a real risk of suffering serious harm such that he was entitled to humanitarian protection and his return would breach Art 3 of the ECHR (see para 83).
8. The appellant sought permission to appeal to the Upper Tribunal on the basis that given those two findings, the appellant was entitled to succeed under the Refugee Convention. He had established that he was at real risk of persecution for a Convention reason in his home area and that internal relocation to Mogadishu was not reasonable.
9. On 5 November 2020, the First-tier Tribunal (Judge Andrew) granted the appellant permission to appeal on that ground.
10. The appeal was listed on 15 April 2021 at the Cardiff Civil Justice Centre for a remote hearing by Skype for Business. The appellant was

represented by Ms Gardiner and the respondent by Ms Pettersen, both of whom joined the hearing by Skype for Business.

11. Ms Pettersen conceded that the judge had erred in law given her findings in paras 68 and 83 of her determination. Ms Pettersen accepted that the judge should have allowed the appeal on asylum grounds given those two findings. She invited me to set aside the judge's decision on humanitarian protection and to substitute a decision allowing the appellant's appeal on asylum grounds. It was accepted that the judge's decision to allow the appeal under Art 3 of the ECHR should stand.
12. I agree with Ms Pettersen's concession. Given the judge's findings in paras 68 and 83, she found, in effect, that the appellant was entitled to succeed under the Refugee Convention as there was a real risk of persecution for a Convention reason in his home area and internal relocation to Mogadishu was not a viable option.

Decision

13. For those reasons, the decision of the First-tier Tribunal involved the making of an error of law. I set aside the judge's decision to dismiss his appeal on asylum grounds and to allow the appellant's appeal on humanitarian protection grounds.
14. I re-make the decision allowing the appellant's appeal on asylum grounds.
15. The decision to allow the appellant's appeal under Art 3 of the ECHR stands.

Signed

Andrew Grubb

Judge of the Upper Tribunal
15 April 2021