Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02007/2020 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
Remotely by Microsoft Teams	**On 15 July 2021**
On 1 July 2021	

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

YMH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Z Jafferji, Counsel by Direct Public Access
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

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.

Introduction

The appellant is a citizen of Somalia who was born on 2 January 1979. He arrived in the United Kingdom on 2 November 2018 and claimed asylum. He claimed that he would be at risk from Al-Shabaab, who had tried to recruit him in Somalia on three occasions.

On 14 February 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

The appellant appealed to the First-tier Tribunal. In a determination sent on 14 November 2020, Judge Sharma dismissed the appellant's appeal on all grounds.

First, he made an adverse credibility finding and rejected the appellant's account that Al-Shabaab had attempted to recruit him in Somalia, that he had refused and was at risk on return as a consequence.

Secondly, the judge found that the appellant could internally relocate to Mogadishu.

Thirdly, the judge found that the appellant had not established that there were "very significant obstacles" to his integration on return to Somalia under para 276ADE(1)(vi) of the Immigration Rules (HC 395 as amended) or that there were compelling circumstances to outweigh the public interest under Art 8 outside the Rules.

The Appeal to the Upper Tribunal

The appellant's appealed to the Upper Tribunal on four grounds.

First, it was contended that the judge had erred in reaching the adverse credibility finding because he had wrongly taken into account as "very significant" three inconsistencies in the appellant's evidence in his screening interview, asylum interview and witness statement (Ground 1).

Secondly, the judge had erred in law by failing to treat the appellant as a vulnerable witness under the Joint Presidential Guidance Note No 2 of 2010 in assessing his evidence, having regard to the appellant's accepted mental health problems of suffering from schizophrenia and depression (Ground 2).

Thirdly, the judge had failed to take into account the appellant's mental health problems in concluding that it would not be unduly harsh for the appellant to relocate to Mogadishu and so could internally relocate (Ground 3).

Fourthly, the judge had erred in rejecting the appellant's claim under Art 8 by failing also to have regard to his mental health problems (Ground 4).

On 14 December 2020 the First-tier Tribunal (Judge J M Holmes) granted the appellant permission to appeal on all grounds.

The appeal was listed for a remote hearing at the Cardiff Civil Justice Centre on 1 July 2021. I was present in court at the Cardiff CJC and Mr Jafferji, who represented the appellant, and Mr McVeety, who represented the Secretary of State, joined the hearing remotely by Microsoft Teams.

Discussion

Ground 1

Mr Jafferji, relying upon the grounds of appeal, submitted that at paras 39–42 of his decision the judge had wrongly identified, or taken into account, three inconsistencies identified by the judge in the appellant's evidence. There, the judge said this:

> "39. Nevertheless, I do not find him to be credible about the claimed recruitment. Whilst it is clear from the information provided to me that Al-Shabaab are active in the area where the appellant lived, his account contains too many inconsistencies about important matters.
>
> 40. For a start, there is the discrepancy between what he said in the screening interview and the asylum interview about the threats to kill him. The account is significantly different: on the one hand he alleges that threats were made to kill him because he refused to work for Al-Shabaab and on the other that he was in fear of being killed if he did not agree to work for them. The two accounts are plainly different. In reaching this view I take into account the appellant's explanation, such that it is, in his witness statement where he states that there is no discrepancy and explains that he did not tell Al-Shabaab directly that he would not work for them.
>
> 41. Next, he stated in the asylum interview that he was initially approached by three members of Al-Shabaab. At paragraph 4 of his witness statement, he refers to there being only two men initially. That is plainly a very significant and relevant inconsistency.
>
> 42. Paragraph 4 is in response to the refusal letter to explain why the appellant was not approached for a few days after the first contact. It is notable that he said in his statement that he did not think that they would follow up the offer to work for them. That is not what he said in the asylum interview where he made it clear (response to question 98) that he was afraid that they would kill him."

At para 43, the judge then went on to reject the argument that the appellant's mental health explained any discrepancies on the basis that the "assertion is not supported by any evidence".

As regards the inconsistency identified in para 40, in his screening interview at section 4.1 the appellant said this:

> "I have problems with a guy from Al-Shebabs. They came to me when I was working in a charity – this was like 18/10/2018 – they told me to change the job to them. I refused and so they said they are going to kill me. If I go back I will be killed."

On the face of it, the appellant there states that he refused to work for them and that they were going to kill him. The reference to the date in 2018 is a reference to one version of the appellant's account (which the judge did not accept) that the appellant had only left Somalia in 2018. The judge did not accept that not least because the appellant had been fingerprinted in Norway on 22 October 2012. Leaving that aside, the inconsistency is then said to arise from the appellant's evidence at his interview where at questions 96 – 99 he said this:

> "96. Question:
>
> Why did you not follow the instruction to go to them given that you agreed to work for them?"
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> 96. Response:
>
> I do not want to work with them I do not want to quarrel with them.
>
> 97. Question:
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> So why did you agree to work for them in the first place?
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> 97. Response:
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> I did not want to work at any time.
>
> 98. Question:
>
> When you say you did not want to work at any time what do you mean by this can you clarify as you had agreed to work with them when they asked you to?
>
> 98. Response:
>
> If I said no I was afraid that they may bring harm to me and kill me.
>
> 99. Question:
>
> But by agreeing and not following their instruction thereafter were you not afraid that they were going to still kill you?
>
> 99. Answer:
>
> I thought that they will forget and that they will not come back to me another time."

In this account, therefore, the appellant states that he agreed to work for them – although he had no intention of doing so – because he was afraid that if he refused they would kill him.

In his witness statement dated 30 March 2020 at para 3, the appellant dealt with this apparent inconsistency, referred to in the respondent's decision letter at para 65, as follows:

> "I do not accept this is a discrepancy in my account. I did refuse to work for Al-Shabaab but I did not say this to them directly as it would have caused me

> serious problems with them. This is why I said in my screening interview that I fear Al-Shabaab because I refused to work for them."

As I understand that explanation, the appellant was emphasising that he was, in fact, refusing to work for them even though that was not what he said to them. Indeed, at question 97 of the asylum interview he emphasises that he "did not want to work at any time".

The judge describes these two accounts as "plainly different". The appellant, in his witness statement, does not deny what is recorded in his screening interview but seeks to explain what he meant which would be consistent with his later detailed account of the three interactions with Al-Shabaab in which he said that he agreed to work for them – although he had no intention of doing so – because he was afraid that if he refused they would kill him.

In my judgment, there is a potential discrepancy in the two accounts given by the appellant in his screening interview and asylum interview. However, the explanation given by the appellant is not one which is wholly implausible. The discrepancy relies upon a very brief statement made by the appellant in his screening interview at section 4.1. In relying upon what was said by the appellant in his screening interview, the judge needed to bear in mind the limited purpose of that interview. In YL (Rely on SEF) China [2004] UKIAT 00145, the IAT at [19] said this:

> "The purpose of [the SEF screening] is to establish the general nature of the claimant's case so that the Home Office official can decide how best to proceed. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated."

There was a need for the judge to exercise caution in relying upon the screening interview in this way. Of course, the weight to be given to any discrepancy is primarily a matter for the judge. An error of law will only arise if the judge unreasonably or irrationally construes or gives weight to a particular discrepancy or fails to give adequate reasons for their conclusion on that evidence. In characterising the discrepancy as "very significant" and being "plainly" or "significantly" different, the judge, in my view, failed reasonably and rationally to place in context the brief statement by the appellant in his screening interview against the more detailed and subsequently consistent account given by the appellant in his asylum interview and thereafter.

As regards para 41 of the judge's decision, Mr Jafferji accepted that there was an inconsistency in the appellant's account as to whether two or three

members of Al-Shabaab approached him initially. In his asylum interview he had said that they were three men [see Q9] whilst in his witness statement (at para 4) he said there were "only two other men". Mr Jafferji submitted that this was not a very significant discrepancy which undermined the appellant's credibility. Mr McVeety accepted that this was not a major discrepancy in the evidence. That, in my judgment, is undoubtedly a proper characterisation. Of course, given that it was an inconsistency what weight to give to it was primarily a matter for the judge subject to a rationality or reasonableness challenge. In itself, I do not consider that the judge erred on that basis in taking it into account. It is unclear, however, whether the discrepancy was ever put to the appellant at the hearing and that he was given an opportunity to explain it. Nevertheless, in itself, I do not consider that the judge erred in law by taking this discrepancy into account.

Turning then to the third discrepancy relied upon in para 42, Mr McVeety accepted that the judge may well have wrongly identified a discrepancy in the appellant's evidence here as he did not refer to question 98 and the appellant's answer to that. The judge identifies an inconsistency in the appellant's statement where he said that he did not think that the members of Al-Shabaab would follow up his offer to work for them which contrasted with his answer in his asylum interview (at Q98) that he was afraid they would kill him.

I have already set out questions 96 to 99 of the appellant's asylum interview and in that interview he plainly states that he agreed to work for them on each occasion, he did so because he was afraid that if he refused they would kill him and he thought they would forget about him and not come back each time. There was no inconsistency such that the judge was entitled to take it into account as undermining his credibility in para 42 of his decision.

It follows that I have concluded that one of the three inconsistencies relied upon by the judge was not an inconsistency at all, one was (at best) a minor inconsistency as to how many members of Al-Shabaab approached him and the remaining inconsistency drew upon something said by the appellant at his screening interview in very brief form contrasted with his detailed account at his asylum interview and thereafter. Mr McVeety submitted that even if that was so, the judge had gone on to find the appellant's account to have been approached on three occasions to be implausible at para 44. There the judge said this:

> "I also do not find credible the explanations given about why the appellant was given a third chance. At paragraph 5 of his statement he explains that he asked for time to get things in order when he was approached the second time. Having failed to do so, he was given a third opportunity for exactly the same reason. I do not accept his explanation (para 6 of his statement) that they did so because they knew where he lived and that he had nowhere else to go. In such circumstances, one may have expected threats to be made to him about his family but that it is not what the appellant states. Whatever is said by Mr Azmi (Counsel for the appellant) about 'less forcible' recruitment, it is clear from the evidence bundles of both the appellant and respondent that Al-Shabaab is a terrorist organisation and has been involved in extremely violent acts. It is not credible that, if a threat was made to the appellant's life, it would not also have been made to his family either directly to them or, more

> likely, to him. After all, according to the appellant, he was someone who they considered useful to them and were keen to recruit him."

Mr McVeety pointed out that this reasoning and conclusion was not challenged in the appellant's grounds. Mr Jafferji accepted that but submitted that the plausibility reasoning was contingent upon a rejecting, on grounds of credibility, the appellant's explanation of why he had been given a third chance. If, therefore, the adverse credibility finding could not be sustained then the reasoning as regards implausibility could not in itself sustain the judge's adverse finding that the appellant's account was not to be believed.

There were plainly some difficulties in the appellant establishing his case, given, and I have only briefly referred to this previously, that he gave two entirely different accounts about when he left Somalia, whether in 2012 (as was eventually accepted) or 2018 (which was rejected). The judge, however, placed no reliance upon that to sustain an adverse credibility finding. Likewise, the judge expressly disclaimed any reliance upon the fact that in 2012 the appellant had gone to Norway and unsuccessfully claimed asylum there (see paras 38 and 46). The judge based his finding on the "many inconsistencies about important matters" which, in fact, boil down to the three I have referred to. He also relied upon the implausibility argument or reasoning in para 44.

Mr Jafferji acknowledged that there were aspects of the appellant's claim which, if a judge were carefully to analyse them, *might* lead a judge not to accept all or any of the appellant's account. That outcome was not, he submitted, inevitable. He submitted that the basis upon which Judge Sharma had rejected the appellant's account as being credible and truthful was insufficient to sustain it. I agree. Albeit with some slight hesitation, given the difficulties I have identified in relation to at least two of the three inconsistencies relied upon (and the third is relatively minor in significance), and that I accept that the implausibility argument was, at least in part, premised on a rejection of the appellant's explanation and therefore his credibility, the judge's reasoning is simply inadequate to sustain his adverse credibility finding. On that basis, I am satisfied that the judge erred in law in reaching his adverse credibility finding.

Mr McVeety accepted that if that was my conclusion, the judge's findings in relation to internal relocation and Art 8 also could not be sustained and the appeal should be heard and decided afresh.

The Other Grounds

In the light of that, it is unnecessary to consider in any detail the remaining grounds of appeal. The outcome of this appeal follows from my acceptance of Ground 1 above.

I would, however, make one point about an issue raised in the remaining grounds. I do not accept that the judge failed to consider the impact of the appellant's mental health on his evidence or the claim. There was, in fact, no medical evidence before the judge as to the impact of the appellant's mental health upon any aspect of his evidence or claim. It was accepted that the

appellant suffered from schizophrenia and depression but that he had been receiving treatment for that not only in the UK but previously in Somalia. No medical report was produced dealing with his mental health condition or treatment of it. There was reference to a letter from, it would appear, his GP at para 27 of the decision. That letter was, however, not placed before the judge as part of the evidence but simply, it would seem, he was told about it at the hearing. It stated that he was taking medication for schizophrenia and depression and had done so for ten years, listing the medication. That evidence did not assist the judge to reach any view on how the appellant's mental health problems affected his evidence. Had the judge done so he would have been inappropriately speculating on the impact of a witness's evidence who suffers from schizophrenia and depression but who is being treated by medication for those conditions. There is no explanation why medical evidence was not placed before the judge but, in its absence, I would not accept Mr Jafferji's submission that the judge failed to take the appellant's mental health condition problems into account in assessing his evidence or his circumstances on return to Somalia.

Nevertheless, for the reasons I have given, the judge's adverse credibility finding cannot be sustained and it is accepted that, as a result, the rehearing of the appeal should be *de novo* with none of the judge's findings in relation to the appellant's asylum claim (including internal relocation) or in respect of Art 8 being preserved.

Decision

For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involve the making of a material error of law. That decision cannot stand and is set aside.

The proper disposal of the appeal is that it should be remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Sharma. None of the judge's findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
5 July 2021