



IAC-FH-NL-V1

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

Appeal Number: DA/00950/2014

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
Oral determination given
immediately following the hearing
On 27 July 2015**

**Decision & Reasons Promulgated
On 9 September 2015**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR ABDUL KADIR SAID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Gunamal (Solicitor)

For the Respondent: Mr W Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Somalia who was born on 2 June 1989. He entered this country on 4 April 1989 (when he was not yet 9 years old) with his brother, using false identities and false passports. He was granted refugee status and indefinite leave to remain on 6 July 2001 as a dependant of his sister's husband.
2. From a comparatively early age the appellant began offending such that by the age of 21 he had some 29 convictions for 44 offences. As the judge

who sentenced him for his most recent offence (a robbery committed on 28 May 2010) noted in his sentencing remarks, these offences included three offences against the person, four offences against property, one public order offence, nine offences relating to either the police, the courts or prisons, five drugs offences and 22 offences of theft and kindred offences, including three robberies. Having listed the categories of offences of which the appellant had been convicted, the judge, in his sentencing remarks went on to state as follows:

“One in 2003 [at a time when this appellant would have been either 13 or 14 years old] involved a victim who was threatened with stabbing and a phone was stolen which was subsequently found in your possession; one, in 2004 when a victim was pushed and patted down and his mobile was taken and one, in 2005, when money was demanded from a victim who then, understandably, handed his wallet over. In addition, there are seven burglaries of dwellings and non-dwellings in 2003, 2004, 2005 and 2006.”

3. The most recent offence (for which the appellant is still serving a sentence of imprisonment of eight years, concerning which his earliest date of release is December this year) was for robbery, and the appellant had pleaded not guilty, but when his dishonest alibi evidence was rejected by the jury, he then admitted the offence (no doubt in the hope of thereby reducing his sentence) but claimed that he was only the lookout. However, the judge, having watched the CCTV of the incident, and also having seen the appellant give evidence, was satisfied that this also was untrue and that the appellant was not just a lookout as he then claimed which would have made him less culpable for this offence.
4. On 14 April 2014 the respondent made a decision to cease the appellant's refugee status, but before doing so, the respondent had written to the appellant on 28 January 2014 giving him an opportunity to make submissions in support of his continued entitlement to refugee status. The respondent also approached the UNHCR, and the final decision was not made until both the appellant and the UNHCR had had an opportunity to make submissions if they so choose. No submissions were received from either. Subsequently, on 15 May 2014 a deportation order was made against the appellant under the provisions of Sections 32(4) and 32(5) of the UK Borders Act 2007, which require a deportation order to be made in respect of a person who has been sentenced to a period of imprisonment of at least twelve months unless an exception under Section 33 of that Act applied. In this case, as already noted above, the appellant had been sentenced to eight years' imprisonment.
5. The appellant appealed against this decision, notice of appeal having been given on 22 May 2014, and his appeal was heard before a panel of the First-tier Tribunal (First-tier Tribunal Judge Halliwell and Ms V S Street JP (Non-Legal Member), sitting at Newport (Columbus House) on 3 November 2014. In a determination promulgated on 14 November 2014, the panel dismissed the appellant's appeal.

6. Although in the grounds of appeal, it had been asserted that the appellant would be at risk on return to Somalia, it is clear from the determination that this argument was not advanced before the panel at the hearing, and nor was there evidence submitted in support of this claim. The appellant was unrepresented at the hearing, but at no stage was an application made for an adjournment on this or any other basis. The hearing (at which the appellant and members of his family gave evidence and were cross-examined) proceeded on the basis that his deportation would be in breach of his Article 8 rights.
7. The appellant then appealed against the panel's decision, and although permission was refused by the First-tier Tribunal, that application was renewed before the Upper Tribunal. The application was substantially out of time, and the Upper Tribunal Judge before whom the appeal was placed considered that there was no satisfactory explanation for this delay. Regarding the excuse tendered, she found as follows:

“The application is out of time. The application was lodged on 29 January 2015, on the 25th working day after the decision of the First-tier Tribunal refusing permission was sent. The delay was therefore substantial. I have considered the explanation offered at section F of the application form. The explanation is not a satisfactory one, given that the appellant would have had the determination of the panel of the First-tier Tribunal. It has not been explained why the appellant's representatives considered that they were unable to lodge the application by considering the determination. Furthermore, the appellant's representatives have not explained who they attempted to obtain the file from, given that the appellant was not represented at the hearing or when he lodged his first application for permission to appeal to the Upper Tribunal. Finally, they were instructed on 16 December 2014, before the decision of the [First-tier Tribunal] refusing permission was sent on 17 December 2014.”
8. Nonetheless, and perhaps rather generously in the circumstances of this appeal, the Upper Tribunal Judge gave permission to appeal, stating that “notwithstanding the length of the delay and the lack of a satisfactory explanation, I have decided to exercise my discretion and extend time”. However, it was made absolutely plain, in bold writing, within the reasons for granting permission, that “**permission is granted but limited to whether the appellant is at real risk of persecution or serious harm or treatment in breach of Article 3 in Mogadishu, applying the guidance in MOJ & Others**”.
9. Regarding the other grounds, the judge granting permission considered there was no merit in them, and it was stated, again in bold, that “**I therefore refuse permission on the remaining grounds**”.
10. The basis of the grant of permission was to enable the appellant to argue that the panel had failed to engage with the guidance given in the country guidance case of *MOJ & Others (return to Mogadishu) Somalia CG* [2014] UKUT 00442.

11. Within her reasons for granting permission, the Upper Tribunal Judge also gave very clear directions which the appellant was obliged to follow, in the following terms:

“As the appellant is in detention, I am issuing directions for witness statements to be served explaining why the appellant will not be able to access funds from his family members in the United Kingdom. Although the panel found that he had abandoned contact with his family in the UK, as he pursued his criminal activities (see para 25), members of his immediate family attended the hearing to support his appeal by giving oral evidence. He should also explain why he will not be able to secure access to a livelihood in Mogadishu, given the panel’s finding that he retains his Bravanese identity and language and that he would have social support in Mogadishu (see para 26 of the determination).

The parties should prepare for the hearing on the basis that, if the decision of the FtT on the asylum ground, humanitarian protection ground and Articles 2 and 3 is set aside, the Upper Tribunal may proceed to re-make the decision on the appeal without adjourning it.

DIRECTIONS:

On or before 2 May 2015, the appellant to file a skeleton argument on the error of law issue and any evidence he seeks to rely upon to show that he is at real risk in Mogadishu, in particular, bearing in mind the guidance in MOJ & Others.”

12. These directions, along with the reasons, were given on 13 April 2015, and were served shortly thereafter, that is a little over three months ago. However, the appellant, and more particularly those representing him now, failed to comply with these directions. Absolutely no further evidence has been filed in support of his claim, as directed, and it was not until the morning of this hearing that a skeleton argument was filed.
13. On behalf of the appellant, before me, Ms Gunamal accepted that the failure to comply with the directions which had been given could not be excused, but attempted nonetheless to explain why it had occurred. She had only been instructed very recently, and had she been instructed herself earlier, she would have ensured that the documents were filed in time. The person who was responsible for handling the appellant’s case had also been looking after his terminally ill wife who had very tragically died about two weeks ago, and therefore he had not done what ought to have been done.
14. Given the history of this case, and notwithstanding the sympathy one must have with the caseworker’s personal circumstances, this does not excuse the failure of the firm to comply with the directions which had been given over three months before, especially in circumstances where there had already been inexcusable delay in filing the renewed application for permission to appeal.
15. Notwithstanding this, Ms Gunamal asked the Tribunal to consider, if an error of law was found, adjourning the hearing so that further evidence could be produced regarding the risk the appellant would face if returned

to Mogadishu now. For example, she submitted, there had been a bomb which had exploded yesterday there.

16. I should perhaps add that in her skeleton argument (which does not contain paragraph numbers and which is not paginated) on the final page under "SUBMISSIONS" it is said that:

"It is the appellant's submission that he cannot return to Mogadishu after such a long period of absence, he has no family members there and he has not support in Mogadishu. The representatives had been unable to get any statements from the family members and the appellant as it was Ramadan and it was difficult to be able to get the family to the office to be able to devise these statements."

17. Then, in the following paragraph, Ms Gunamal continues as follows:

"It is submitted if an material error of law is found today we request that the full hearing be adjourned for the appellants family members to be able to produce these statements and any evidence to back up these statements in relation to the financial capacity they have in supporting the appellant and any reasons believed to why he cannot return to Mogadishu in line with the guidance of **MOJ** also to be able to visit the appellant and to be able to take full instructions from him in relation to his risk and why it is believed that" [the paragraph ends there].

18. So the position before the Tribunal at the hearing was that, notwithstanding the directions which had been given, even if the Tribunal was to find that there had been an error of law in the determination of the First-tier Tribunal, the appellant would be unable to establish that he would be at risk on return without a further adjournment, notwithstanding that the judge who had granted permission to appeal had stated in terms that the parties should prepare for the hearing on the basis that if the panel's decision was set aside, "the Upper Tribunal may proceed to remake the decision on the appeal without adjourning it".

Appellant's Submissions

19. Essentially the submissions advanced on the appellant's behalf at the hearing can be summarised as follows. Although he may not himself have advanced his asylum claim with any force at the hearing, nonetheless he did wish to maintain this claim, and the panel should have made due allowance for the fact that he was unrepresented and considered this itself, whether or not the appellant had advanced this aspect of his claim with any force. Secondly, given the nature of his claim, the panel should in any event have adjourned the hearing in order to allow the appellant to seek representation.
20. In the course of advancing these submissions, Ms Gunamal made a number of assertions which had not been set out in the grounds and were not supported by evidence. For example, she asserted that some ten minutes before the hearing, the appellant had been given a 150 page bundle from the respondent which he had had no opportunity of considering. When asked how she could assert this, she informed the

Tribunal that the appellant had told her this before the hearing. She also asserted that the appellant had been unaware that he could have representation at this hearing.

21. Ms Gunamal also stated, apparently on very recent instructions, that although the appellant had not produced any evidence, he had tried to pursue his asylum claim at the hearing.

Discussion

22. I deal first with the submission that the panel, of its own volition, should have adjourned the proceedings. In my judgment, there is absolutely no reason why the panel should have done so. Regrettably, by the age of 21, this appellant has had more experience of courts than most people would acquire in several lifetimes, and had he considered that he needed an adjournment, either for the purpose of seeking further evidence or because for reasons which he could have explained (if there were any) he had been unable to obtain representation which he now wished to have, he could have requested an adjournment. It is also the case as noted above, that the respondent had written to the appellant on 28 January 2014 giving him an opportunity to provide submissions in support of his continued entitlement to refugee status, and the appellant had failed to do so. The respondent had also approached the UNHCR for its observations, and a final decision had not been made until three months after these approaches had been made. Accordingly, even had the appellant sought an adjournment of the hearing in order to make representations as to why he should still be entitled to asylum, he would have had to provide not only very good reasons as to why he had been unable to provide evidence in support of his claim before the court but also why he had not done so before the decision was made (for which he had had three months). In the event, he had produced no evidence and did not seek an adjournment, and in light of his very long history of dishonesty, there is absolutely no reason why the Tribunal should now accept assertions made for the first time on his behalf that in fact at the hearing he had sought to maintain his asylum claim or that he had been handed documents a mere ten minutes before the commencement of the hearing.
23. This Tribunal is also entitled to have in mind that in circumstances where the application for permission to appeal was itself filed considerably out of time the applicant had still provided absolutely no evidence in support of the assertion made on his behalf that he would be at risk on return, notwithstanding the very clear directions which had been made when he was somewhat generously granted permission to appeal.
24. Turning to the substantive argument, which is that the Tribunal should have considered the asylum claim in any event, in my judgment there is no merit in this submission either. It is clear from paragraph 26 of the determination that the panel did indeed consider whether the appellant would be at risk on return, even though this aspect of his claim had not

been specifically advanced at the hearing. The panel, at paragraph 26, found as follows:

“26. The appellant has flouted the laws of the land over a prolonged period, committing offences of increasing gravity. In effect he rejected his schooling, being excluded at the age of 13, and ended up in the care of the local authority. It cannot be said that he is, in any meaningful or positive sense, culturally or socially integrated into the UK. The recent Upper Tribunal case of *MOJ & Others* at paragraph 44 shows that conditions are now such in Mogadishu that there are no significant obstacles to the integration of the appellant back into Somali society. He retains his Bravanese identity, and the language, and would have social support there from his clan.”

25. It is accordingly clear that the panel did have in mind the guidance given in *MOJ*, and in the absence of evidence from the appellant as to why this guidance should not have been followed, or even submissions to the effect that he would be at risk on return, the Tribunal was not obliged to explore this aspect of the case any further. The appellant was supported by some of his relatives in this country who gave evidence at the hearing before the panel and it was not suggested at that hearing that these family members could not or would not continue to provide some assistance after his return. When considering whether there was an arguable error of law in the panel's failure to consider (of its own volition) whether this appellant might be at risk on return, this Tribunal must also have in mind the guidance summarised at paragraph (x) of the head note in *MOJ*, that:

“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.”

26. Clearly, the return of this appellant, who poses a significant risk to British society, is proportionate, and that aspect of this case is not now before me. The only basis upon which his return could be said to be unlawful is that he would be at such risk on return as to engage his Article 3 rights, but every opportunity to provide evidence in support of such an argument has been neglected such that even now there is no evidence before the Tribunal in support of such a claim. There was certainly none before the First-tier Tribunal and there was accordingly no basis upon which it could have reached such a conclusion. In those circumstances, there was no error of law in the panel's determination and this appeal must accordingly be dismissed.

Decision

There being no error of law in the determination of the First-tier Tribunal, this appeal is dismissed.

Signed:

A handwritten signature in black ink on a light blue background. The signature reads "Ken Craig" in a cursive, slightly slanted script. The "K" is large and the "C" in "Craig" is particularly prominent.

Upper Tribunal Judge Craig

Date: 3 September 2015