



IAC-AH-KRL/KEW-V1

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

Appeal Number: AA/03013/2015

THE IMMIGRATION ACTS

Heard at Belfast

**Decision and Reasons
Promulgated**

On 1 December 2015

On 1 February 2016

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H Y

Respondent

Representation:

For the Appellant: Ms M O'Brian, Home Office Presenting Officer

For the Respondent: Mr S McTaggart, Counsel, instructed by RP Crawford & Co
Solicitors

DECISION AND REASONS

1. The appellant in these proceedings is the Secretary of State. However, I refer to the parties as they were before the First-tier Tribunal.
2. Thus, the appellant is a citizen of Somalia, born on 15 March 1990. He arrived in the UK on 13 August 2013 and claimed asylum on 13 August 2013. That claim was refused and a decision made on 16 February 2015 to remove him under Section 10 of the Immigration and Asylum Act 1999.

3. The appellant's appeal against that decision came before First-tier Tribunal Judge McGrade on 24 June 2015 whereby the appeal was allowed on asylum grounds.

The First-tier Tribunal's decision

4. Judge McGrade gave a summary of the appellant's account which was as follows. He claims to be a member of the Reer Hamar minority ethnic group from Tordho village in the Lower Juba region of Somalia. He worked on his parents' farm and helped his father as a teaching assistant, his father being a teacher of the Qur'an.
5. In 2013 Al-Shabaab were in control of his home area. He stopped attending the mosque on Fridays as Al-Shabaab would ask young people to join them and the appellant did not want to. He was however, approached many times. On a Friday, 26 July 2013, he was at home when members of Al-Shabaab came to the house. The appellant was assaulted, handcuffed, blindfolded and taken away. He was detained for three days.
6. On 29 July 2013, there was shooting outside the house where he was detained. The appellant and some others managed to escape. Someone the appellant knew who was also detained helped him by taking him to someone that his father knew. With the assistance of an aunt in Saudi Arabia he went to Mogadishu, and then left the country, eventually arriving in Northern Ireland.
7. Judge McGrade set out the appellant's account and gave a summary of country background material.
8. At [20] he concluded that the appellant's account is "reasonably plausible and consistent with the objective evidence". At [22] he stated that he accepted that the appellant and his father were viewed with suspicion by Al-Shabaab on account of the appellant's unwillingness to subscribe to the views of Al-Shabaab and to join them. He also stated that he accepted that Al-Shabaab came to his home on around 26 July 2013 and detained him and others. He concluded that the appellant's account of being held in a house for three days was not inherently improbable.
9. At [23] he stated that he had some concerns about the appellant's ability to make arrangements to travel to the UK so quickly. He nevertheless accepted the appellant's account of his escape and the arrangements made for him to flee Somalia.
10. Regarding the appellant's account that his father is in prison and that his mother, wife and three sisters are in an IDP camp in Kismayo, he also accepted that aspect of the account. In the next paragraph he also stated that he accepted that the appellant's aunt was deported from Saudi Arabia and is also in an IDP camp with the appellant's mother and other family members.

11. As regards internal relocation, it was accepted that the appellant had not previously lived in Mogadishu, and although he found that there were some clan connections between the Reer Hamar and Mogadishu, he was not satisfied that those connections are sufficiently strong to enable the appellant to rely on them. It was also accepted that the appellant will have no access to financial resources in Mogadishu.
12. At [31], although accepting that the appellant is a young healthy male, it was found that those factors of themselves are not sufficient to conclude that he would be able to obtain employment or become self-employed. Given that his aunt left Saudi Arabia and is now living in an IDP camp, he found that the appellant could not expect to receive remittances from abroad. He also noted that whilst in the UK the appellant had relied entirely upon NASS support.
13. Accordingly, he found that the appellant was likely to have to live in makeshift accommodation within an IDP camp which falls below acceptable humanitarian standards. Thus, he found that it was not “reasonable” for the appellant to relocate to Mogadishu.

The Grounds and Submissions

14. The respondent’s grounds refer to aspects of the reasons for refusal letter and contend that the judge had not given adequate consideration to those reasons for refusing the appellant’s claim. Similarly, it is asserted that he had not given adequate reasons as to why he was prepared to accept the appellant’s evidence. This includes the appellant’s claim that his father is in prison and other family members are in IDP camps.
15. The grounds also take issue with the judge’s assessment of the ability of the appellant to relocate to Mogadishu, particularly considering the conclusion that the appellant is a young healthy male and that there are some clan connections between the Reer Hamar and Mogadishu.
16. With reference to the country guidance decision in *MOJ & Others (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC), the grounds argue that the judge erred in law in failing to follow that decision, or if he had decided not to follow it to explain what his reasons were.
17. In submissions Ms O’Brian relied on the written grounds. She submitted that at [20] the judge had referred to the appellant’s account as being reasonably plausible and consistent with the objective evidence, but in fact in terms of Al-Shabaab recruiting child soldiers the appellant’s account was not consistent with that.
18. At [23], although stating that he had some concerns about the appellant’s ability to make arrangements to travel to the UK so quickly, the judge nevertheless went on to accept the appellant’s account without explaining why his concerns in that respect were dispelled, or how. A mere reference to the lower standard of proof is not a sufficient basis for the judge’s

conclusions. Similarly, no reasons are given at [25] for the conclusions reached about the appellant's father being in prison or his other family members being in an IDP camp.

19. So far as internal relocation is concerned, the judge had not applied the appropriate test. It is similarly not clear as to whether the judge had decided to follow the guidance in *MOJ* or had distinguished it for some reason.
20. Even if the judge was purporting to follow the guidance in *MOJ*, inadequate reasons were given as to why the appellant would find himself in an IDP camp. Again, reference was made to the decision letter in this respect, in particular at [44].
21. Mr McTaggart's submissions highlighted aspects of the appellant's account that were accepted by the respondent. These were that he was from a minority clan, the Reer Hamar, that his home area was controlled by Al-Shabaab and that members of Al-Shabaab would approach the appellant and ask him to join them, that matter being consistent with the country information (see [13] of the refusal letter).
22. At [20] of the refusal letter it was accepted that Al-Shabaab have forcibly recruited children and adults in the areas controlled by them in south and central Somalia. Although most recruitment was of 16 to 20 year olds, the appellant was just over that age, being 23 years of age.
23. The First-tier Judge had taken those accepted features of the appellant's case, and applied the lower standard to find his account credible. In reality, the respondent's case is nothing more than disagreement with the judge's findings.
24. So far as the judge's conclusions at [25] are concerned, in terms of the appellant's father being in prison and his other family members being in an IDP camp, those situations are quite common and there was no reason not to accept the appellant's account. The judge had before him a large bundle of background evidence.
25. It was submitted that there was no substance to the complaint about the test applied by the judge in terms of internal relocation. The refusal letter itself refers to questions of whether it would be "unreasonable" to expect the appellant to live in Mogadishu.
26. The judge had applied *MOJ*. His conclusions at [29]-[31] are all taken directly from that decision. He had not indicated that he was departing from *MOJ*, and he would have said so if that was his view. The only thing that the appellant had in his favour was that he was a young healthy male, but the judge took that into account. There is reference at [400]-[401] of *MOJ* to returns of Somali citizens from Saudi Arabia.

My assessment

27. It is axiomatic that a judge is required to give reasons for the conclusions reached. At [21] the judge summarised the respondent's objections to the credibility of the appellant's account, and in subsequent paragraphs made a series of positive credibility findings.
28. It is true that the judge's assessment of the appellant's credibility will have started from a standpoint of some aspects of his account having been accepted by the respondent, as outlined in submissions to me by Mr McTaggart. However, I do not consider that that fact, together with the lower standard of proof, was a sufficient basis from which the judge was able legitimately to conclude that the appellant's account was credible in all respects.
29. The judge's conclusions contain a spectrum of reasoning from some relatively 'thin' reasoning, to no reasons at all.
30. In the refusal letter at [20], doubt is expressed about the appellant's claim that Al-Shabaab came to his home and abducted him, in the light of the fact that the background evidence suggested that Al-Shabaab mostly recruited 16 to 20 year olds, whereas the appellant was 23 years of age. Although it was accepted by the respondent that the appellant had been approached at the mosque and in the market, or when he was walking around town, the further contention that he was abducted from home was not accepted. Reference is made at [20] of the refusal letter to background evidence suggesting that only 13 per cent of Al-Shabaab recruits had been forcibly recruited.
31. At [22] of his decision the judge stated that he was "prepared to accept" that the appellant and his father were viewed with suspicion by Al-Shabaab on account of the appellant's unwillingness to subscribe to the views of Al-Shabaab and to join them. However, in going on to accept that Al-Shabaab came to his home and detained him, the only reasons given for accepting that aspect of the account are circular, stating that they may well have sought to detain the appellant both to intimidate him and in the hope that he may join them. However, that does not engage with the issues raised by the respondent in the refusal letter in terms of the appellant's age and in terms of evidence suggesting that only a relatively small percentage of recruits who had been interviewed said that they had been forcibly recruited.
32. Mr McTaggart sought to persuade me that the appellant being aged 23, he was only just above the age in relation to which the background evidence shows that there was forcible recruitment. However, it is not apparent from the decision that the judge accepted the appellant's account of his abduction and detention on the basis that he was near enough to the age of forcible recruitment.
33. Furthermore, at [21] of the refusal letter the reasons given by the appellant for the forcible recruitment, being the possibility that one of his neighbours must have told them that he was reciting the Koran, is

inconsistent with the background evidence in terms of Al-Shabaab's strict interpretation of Sharia law, suggesting that that would not be a reason for the appellant to be forcibly recruited.

34. In addition, at [22] the judge concluded that the appellant's account of being held in a house for three days and only being spoken to when he was brought food and called to prayer was not inherently improbable. However, the respondent contended in the refusal letter at [22] that his account of his detention was vague and his claim of only being spoken to at times when he was brought food or taken for prayer was inconsistent with their having abducted him in order to force him to fight for them. It was asserted by the respondent that the time and effort taken to capture him and guard him for three days so that they could persuade him to join them is not reasonably likely. Again, the judge does not engage with this aspect of the respondent's case.
35. The judge stated at [23] that he had "some concerns" about the appellant's ability to make arrangements to travel to the UK so quickly. He then went on to accept that aspect of the appellant's account but the only reasons offered are "bearing in mind the low standard of proof."
36. The respondent explained in the refusal letter at [23] and [24] why his account of his escape was not accepted. However, the judge stated that he was "prepared to accept" that aspect of his account, again only citing the low standard of proof. These in my judgement are not legally sustainable conclusions, being conclusions reached without any apparent reasons.
37. Similarly, at [25] the judge simply stated that he was "prepared to accept" that the appellant's father is in prison without giving any reasons for coming to that view. He also concluded that the appellant's account of his mother, wife and sisters having chosen to move to an IDP camp was also credible, although in that respect he did give a reason, namely that they no longer considered that it was safe to remain in their home without a male head of household to protect them and Al-Shabaab would not permit them to work. However, the foundation for those findings, namely that the appellant's father is in prison, is unreasoned.
38. At [26] no reasons are given for the judge's acceptance of the appellant's account that his aunt was expelled from Saudi Arabia. It is true that in *MOJ* reference was made to Somalis being expelled from Saudi Arabia but the judge does not refer to *MOJ* in that respect, or indeed to any background evidence on that issue. It may be that support for the appellant's account in that regard can be found in *MOJ* and country background material, but it was incumbent on the judge to support his findings in that respect with reasons.
39. In terms of the positive credibility findings, Mr McTaggart understandably was at pains to identify evidence, or to posit reasons, as to why the judge's findings could be supported. However, it seems to me that the

casting around for support for the judge's conclusions supports the proposition that the judge's own reasons are legally inadequate. The starkest examples of this are the judge's acceptance without reasons of the appellant's account of his escape from detention, his father being in prison and his aunt being expelled from Saudi Arabia.

40. So far as the respondent's other grounds are concerned, in terms of internal relocation and the application of *MOJ*, they are in a sense parasitic on the grounds in relation to credibility. The assessment of the appellant's credibility in terms of what family support he has, and what access to remittances he may have, are all dependent on sustainable credibility findings. In those circumstances, I do not consider it necessary to resolve the other grounds of appeal.
41. For the reasons identified above, I am satisfied that the First-tier Judge erred in law in terms of the assessment of credibility. In those circumstances, his decision must be set aside.
42. It was agreed between the parties that if my conclusion was that there was an error of law in the assessment of credibility requiring the decision to be set aside, the appropriate course would be for the appeal to be remitted to the First-tier Tribunal for a hearing *de novo*. I too consider that that is the appropriate course of action having regard to paragraph 7.2 of the Senior President's Practice Statement.
43. Accordingly, the appeal will be remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Judge McGrade. No findings of fact are preserved except as already accepted by the respondent, or otherwise agreed by the parties.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Judge McGrade.

Upper Tribunal Judge Kopieczek

29/01/16