



IAC-AH-KRL-V1

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

Appeal Number: AA/05818/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 January 2016**

**Decision & Reasons Promulgated
On 9 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOHAMED MAHMOUD AL BAKRI
(NO ANONYMITY DIRECTION)**

Respondent

DECISION AND REASONS

1. I shall refer in this decision to the respondent as the appellant and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal). The appellant, Mr Mohamed Mahmoud Al Bakri was born on 4 April 1994 and is a male citizen of Somalia. He appealed to the First-tier Tribunal (Judge Fenoughty) against the decision of the respondent dated 20 March 2015 to refuse to grant him asylum and to remove him from the United Kingdom by way of directions under Section 10

of the Immigration and Asylum Act 1999. The First-tier Tribunal, in a decision promulgated on 28 July 2015, allowed the appeal on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. There is one Ground of Appeal. The appellant claimed that he had been held prisoner by the Islamist terror group Al Shabaab from January 2011 until he escaped from a compound in Shalanbood (a suburb of the town of Marka) in January 2013. The Secretary of State submits that the judge erred by finding that the appellant's own account of that imprisonment and escape was consistent with the background evidence concerning power and influence of Al Shabaab within Somalia.
3. The judge found that the appellant's account was broadly consistent with the background material. It is clear that the judge accepted the appellant's evidence that he had been held against his will by Al Shabaab until he was able to escape. The judge also accepted the appellant's evidence that the appellant's cousin had been killed approximately a month after the escape along with the cousin's mother. Further, after Al Shabaab discovered that the appellant's grandmother had been harbouring him, she was also killed. The Secretary of State relies upon the COI Report of 2014 which noted that between August 2012 and October 2013 Al Shabaab was restricted to "underground and guerrilla/terrorist operations." A report entitled Somalia: Lower Shabelle of October 2013 recorded that "on 27 August [2012] [AMISOM - African Union of Somalia] took the town of Marka". The Secretary of State argues that, following ousting of Al Shabaab from Marka on 27 August 2012, the appellant's account of being held a prisoner in Marka until January 2013 was implausible.
4. The judge has produced a careful detailed decision. There is no doubt that she has engaged with all the evidence, including the background material. I am, however, not satisfied the judge has considered the unequivocal evidence which I have cited above (that, on 27 August 2012, AMISOM took the town of Marka from Al Shabaab) in making her analysis of the credibility of the appellant's own evidence. At [44] the judge stated that she did not agree the appellant's evidence was "at odds with the background information." The judge considered it was "unclear" exactly how and over what period Al Shabaab was ousted from Marka but "the account given by the appellant broadly coincides with the evidence that the Government forces clashed with [Al Shabaab] towards the end of 2012 as part of a gradual advance." The COI Report [page 104, paragraph 3.4] does indeed report that "the advance [of Government forces] took place gradually and irregular intervals." However, the same paragraph of the report unequivocally states that Marka was taken on 27 August 2012. In the light of that evidence, it is not clear why the judge found that Government forces "clashed with" Al Shabaab towards the end of 2012 "as part of a gradual advance"; whilst the advance of the Government forces on Marka may have been gradual, the town had fallen to Government forces by the end of August 2012. The judge's circumspection appears unwarranted in the light of this unequivocal evidence. In the next paragraph [45], the judge observed that, "Al Shabaab's power and influence in the appellant's home region had reduced by the time he left." Indeed, the judge noted that Al Shabaab had been "ejected" from Marka but that it

had “retain[ed] an underground presence.” That represents a reasonably accurate reading of the background material but I am unable to identify any part of the judge’s analysis which addresses directly the appellant’s claim to have remained in detention in an Al Shabaab compound in Marka between 27 August 2012 (when the town fell to Government forces) and his claimed escape in January 2013. I do not say that the appellant cannot resolve that apparent inconsistency between his evidence and the background material but I do say that the judge has failed to address properly this part of the appellant’s evidence. In the circumstances, I set aside the First-tier Tribunal decision and will remit the appeal to the First-tier Tribunal (not Judge Fenoughty) for that Tribunal to remake the decision. I find that there is no alternative but to set aside the Tribunal’s findings of fact given that the error of law is, as the Secretary of State submits, central to the judge’s analysis of the appellant’s credibility.

Notice of Decision

5. The decision of the First-tier Tribunal which was promulgated on 28 July 2015 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal (not Judge Fenoughty) for that Tribunal to remake the decision.
6. No anonymity direction is made.

Signed

Date 29 February 2016

Upper Tribunal Judge Clive Lane