



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

Appeal Number: AA/06670/2014

THE IMMIGRATION ACTS

**Heard at : Manchester Crown Determination & Reasons
Court Promulgated
On : 17 March 2016 On : 12 April 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

[A B]

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood of Rochdale Law Centre

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims to be a national of Somalia born on [] 1996. He travelled to the United Kingdom by aeroplane using a false passport, arriving in March 2014. On 12 March 2014 he claimed asylum. His claim was refused on

22 August 2014 and the following day the respondent made a decision to remove him from the United Kingdom.

2. The appellant appealed against that decision and his appeal was heard before the First-tier Tribunal on 20 November 2014 and dismissed. Permission to appeal to the Upper Tribunal was granted on 12 January 2015.

The Appellant's Case

3. The appellant claimed to belong to the Bajuni tribe and to have lived in Chula, part of the Bajuni islands off the coast of Somalia. He claimed to speak Kibajuni and a little Arabic but to speak no Somali other than a few words. His father was a fisherman. In 2004 his family moved to Koyama because they were attacked many times in Chula by the majority clans. In 2004 his mother and sister were raped in front of him. They lived in Koyama from 2004 until 2010, during which time they experienced a lot of violence from majority clans. In 2010 he went fishing with his father and returned to find the village deserted after being attacked by Dawood militia. He believed that his mother and siblings fled to avoid that attack and he had no news of them since that incident. He and his father were abducted and detained in a camp in Koyama and the people who detained them told them that they were Al Shabab and that his father was considered to be a spy working for the government. He and his father were ill-treated whilst detained and managed to escape after a week. A man detained with them was killed as a suspected government spy. The appellant claimed that he and his father returned to Chula and went to stay with his father's brother and his family. They remained in Chula until 2013. His uncle was killed in 2013 by majority clan members and Al Shabab and his body was brought to them. The appellant claimed that he left Somalia a few months later. They travelled to Yemen by ship. His father paid for the journey with some gold or money he had managed to keep safe. They stayed in a mosque in Yemen, but his father passed away after two months. After three months he was assisted by an agent in leaving Yemen. He travelled to unknown countries, staying in one for three months, and then flew to the UK using a travel document containing someone else's photograph. He would be persecuted if he had to return to Somalia because he was a member of a minority clan and a minor. He feared the majority clans and Al Shabab.

4. The respondent, in refusing the appellant's claim, did not accept that he was Somali from the Bajuni islands. It was noted that he was no longer a minor. It was not accepted that he was at risk of persecution as a Bajuni clan member and it was noted that his account of the situation for the Bajunis was inconsistent with the country information. The respondent did not accept that the appellant and his father were detained by Al Shabab. The respondent considered that the appellant could safely be returned to Mogadishu and that his removal would not breach his human rights.

5. The appellant appealed that decision to the First-tier Tribunal and his appeal was heard before First-tier Tribunal Judge Lever on 20 November 2014. Judge Lever considered that the appellant's inability to name all of the Bajuni

islands carried little evidential weight, but likewise found that the fact that he spoke Kibajuni was also not determinative, since it was spoken in other bordering countries. The judge found that the appellant's account of his journey to the UK undermined the credibility of his account of his circumstances in Somalia. He did not accept the appellant's account of his detention and escape, nor any other aspect of his claim, and was satisfied that he did not come from Chula or Kayama. He did not consider the appellant to be at risk on the basis of his clan membership or on any other basis and considered that his removal would not breach his human rights. Accordingly he dismissed the appeal on all grounds, commenting that there had been no submissions on Article 8 and that it did not, in any event, arise.

6. Permission to appeal was sought by the appellant on the grounds that the judge had erred by failing to take account of the country guidance in KS (Minority Clans, Bajuni, ability to speak Kibajuni) Somalia CG [2004] UKIAT 00271 and by failing to make a finding on the appellant's nationality; that the judge had misapplied the standard of proof; that the judge had not particularised the evidential basis upon which he made his adverse findings in relation to the appellant's journey to the UK; and that the judge had erred by failing to make an assessment under Article 8 when that had been relied upon by the appellant.

7. Permission to appeal was granted on 12 January 2015.

Hearing and submissions

8. Mr Wood relied upon, and expanded upon, the grounds of appeal. He submitted that the judge's decision should be set aside and re-made by allowing the appeal on the basis of the appellant's clan membership and the country guidance in KS and on the basis that he had no means of support in Mogadishu. The judge had applied the wrong standard of proof and had made assumptions using western logic when making his adverse findings on the appellant's journey. He had erred by failing to consider Article 8.

9. Mr McVeety submitted that the judge's rejection of the appellant's account of his clan membership was consistent with the guidance in [43(ii)] of KS, that the judge had not misapplied the standard of proof and that he had speculated appropriately in regard to relevant aspects of the appellant's journey. Mr McVeety conceded, however that the judge had erred by failing to consider Article 8 when it had been relied upon.

10. Mr Wood reiterated his submissions in response and asked that the appeal be remitted to the First-tier Tribunal for the appellant's Article 8 claim to be assessed. There was some discussion as to what purpose would be served by remitting the case on that basis when the evidence was already before me. Mr Wood submitted that the appellant was entitled to have his claim considered in full and that his foster parents would wish to give oral evidence. I pointed out to him that they had not provided oral evidence previously or even adduced statements when they had the opportunity to do so before Judge Lever and

asked him whether the appellant's circumstances had changed since that hearing. Mr Wood was unable to assist and I concluded that no purpose would be served by remitting the case to consider Article 8 if no error of law were otherwise found in the judge's decision (having reserved my decision in that regard), but I gave him the opportunity to present oral evidence before me, given that the appellant's foster father was present. I did not consider the absence of an interpreter to be a reason not to proceed when it was clear that the appellant conversed in English with his foster family.

11. The appellant's foster father, Mr Khan, then gave evidence before me, confirming that the appellant had been living with his family since 2014 and was very close to them, particularly to his son who was 15 years of age and whom he considered as a brother. Mr Khan confirmed that the appellant was financially supported by Leeds social services and would continue to be so supported until the age of 21, as was the usual practice. He was trying to help the appellant develop some independence but his desire was currently to remain living with his family. The appellant did not give evidence.

12. Both parties made further submissions in regard to the appellant's Article 8 claim.

Consideration and findings.

13. It is submitted on behalf of the appellant that Judge Lever failed to apply the principles set out at [43] of KS in assessing the appellant's nationality and clan membership and that he failed to make proper findings in that regard. However I would agree with Mr McVeety that, on the contrary, the judge has plainly had regard to, and followed the guidance in KS, albeit not specifically citing the case by name, but nevertheless confirming at [30] that he had had regard to the relevant country guidance. His findings followed the guidance in [43] of KS, commencing initially with his finding at [21] that the fact that the appellant spoke Kibajuni was not a determinative factor. In line with [43(ii)] of KS, he conducted an overall assessment of credibility, giving full and detailed reasons for rejecting the appellant's account of having come from the Bajuni islands.

14. At [38] the judge emphatically rejected the appellant's claim to have come from Chula or Kayama and rejected his account of his experiences in those places. His adverse credibility findings were based not only upon the appellant's account of his journey but also upon his detailed findings at [32] to [37], which included the lack of any proper explanation for his father having been accused of being a government spy, the lack of credibility of his account of his escape from Al Shabab, the lack of any effort to locate the rest of the family upon their release, the contradiction between the account of the loss of contact with his family and the reference to siblings in the UK and the lack of previous mention of the death of his uncle.

15. The grounds challenge the judge's findings about the appellant's journey to the UK, on the grounds that they were purely speculative. However, as Mr

McVeety submitted, it was not unreasonable for the judge to find that the details provided by the appellant himself in relation to his journey, including air flights, false passports and agents, suggested a significant financial outlay which was wholly inconsistent with his account of his family's circumstances and background, in particular on the basis of clan membership, and with his account of his father's abduction, escape and flight to Yemen. I would agree with Mr McVeety that the conclusions drawn by the judge on these matters were open to him.

16. The grounds also challenge the judge's adverse credibility findings on the basis that he applied the wrong standard of proof, referring in particular to the second to fourth sentences in [39] of his decision. With regard to the second and third sentences, it seems to me that the judge was making clear that, whilst not accepting that the appellant had demonstrated that he was a Somali national of the Bajuni clan, he was prepared to assess risk on return to Mogadishu on that basis. I see no error in him proceeding on that basis. In any event I agree with Mr McVeety that, whilst taken in isolation those sentences may not have been expressed in the clearest of terms, it is nevertheless plain from a consideration of the judge's findings as a whole that the correct standard of proof was applied to the evidence and to the question of risk on return. The judge directed himself appropriately in regard to the burden and standard of proof at [16] to [18] and there is no indication in any of his findings and conclusions that he did not follow that self-direction appropriately.

17. In assessing risk on return to Mogadishu the judge had careful regard to the expert report, in particular paragraphs 36 to 42, and gave careful consideration to the country guidance in MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442, applying his own findings on the appellant's family circumstances, origins and experiences to the guidance at paragraphs (xi) and (xii) of the headnote. Having, for reasons fully and properly given, rejected the appellant's account of his family's background and origins and having rejected his account of the lack of family support in terms of their presence and financial circumstances, he concluded that the appellant had failed to demonstrate that he would fall within the risk categories set out in those paragraphs. That was a conclusion that he was entitled to reach for the reasons fully and cogently given.

18. For all of those reasons I find that the judge made no errors of law in his decision dismissing the appellant's appeal on asylum, humanitarian protection and Article 3 human rights grounds.

19. Turning to Article 8, Mr McVeety conceded that the judge had erred in law in that respect since it was clear that, contrary to the judge's comment at [41], it was a matter that had been pursued before him. As already stated I did not consider that it was appropriate to remit the case to the First-tier Tribunal. Whilst Article 8 was relied upon before the judge, it is clear from the limited evidence before him, the skeleton argument and the judge's record of proceedings that it was not a matter pursued with any particular vigour. No oral evidence was called from the appellant or his foster parents in relation to

Article 8 and neither were any statements produced in the appeal bundle in that regard. Paragraphs 19 to 20 of the skeleton argument before the judge provided brief arguments.

20. There has been no change in the appellant's circumstances since that time to justify a further opportunity to present such evidence before the First-tier Tribunal. The appellant had been put on notice, in the directions served with the grant of permission, that in the event of the decision of the First-tier Tribunal being set aside, it was possible that the Upper Tribunal would proceed to re-make the decision and that accordingly any further evidence relied upon should be submitted for the hearing. No further evidence had been submitted and in any event there was no such evidence. I was able to hear oral evidence myself as the appellant's foster father was present at the hearing before me. Having heard that evidence and Mr Wood's submissions thereon, I make the following findings on Article 8.

21. The appellant is unable to meet the criteria in Appendix FM and paragraph 276ADE(1) and that much is agreed. As to any compelling circumstances existing outside the rules to justify a grant of leave, there are clearly none. I do not accept that the relationship between the appellant and his foster family can be described as family life for the purposes of Article 8, as is claimed. Mr Khan could not recall how long the appellant had resided with his family and believed the appellant to have joined his family when under the age of 16, whereas he was in fact almost 18 years of age. Whilst I nevertheless am prepared to accept that a close relationship has developed between the appellant and his foster family and that the appellant is close to his foster brother, there is no evidence that those ties are particularly or compellingly strong and it is clear that this is simply an arrangement which is supported by social services. Even if I accepted that family life had been established, and on the basis that the appellant has established a private life in the UK, the evidence is very limited and does not in any way approach a level which could possibly outweigh the public interest in maintaining an effective immigration control.

22. Accordingly, any error made by the First-tier Tribunal Judge in failing to make findings on Article 8 is not material, since the appellant could not possibly have succeeded before him in any event. Alternatively, even if the decision of Judge Lever were set aside by reason of a failure to make findings, in re-making the decision I would dismiss the appellant's appeal on Article 8 grounds for the reasons given.

DECISION

23. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed

Upper Tribunal Judge Kebede