



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

Appeal Number: DA/00286/2014

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

Decision & Reasons

On 30 November 2015

Promulgated

On 18 January 2016

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AAM

(ANONYMITY ORDER MADE)

Claimant

Representation:

For the Appellant: Mr K Norton, Home Office Presenting Officer

For the Claimant: Ms Rahman, instructed by IAS, Birmingham

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Herlihy promulgated on 15 May 2015, in which she allowed the claimant's appeal against the decision of the Secretary of State (whom I refer to as the respondent as she was below) made on 29 October 2013 to make a deportation order made against him.
2. The claimant is a citizen of Somalia who entered the United Kingdom with his mother and siblings in 2000 to join his father who was already here. It is the claimant's case that his father had been recognised as a refugee and that he too, after arrival, had been granted refugee status. The

claimant's case is that he is at risk of persecution and/or ill-treatment contrary to article 3 of the Human Rights Convention if deported to Somalia.

3. The claimant has been convicted of several offences as detailed in the respondent's letter of 29 October 2013, including on 22 July 2005 six counts of robbery and attempted robbery for which he received 39 months imprisonment and on 14 December 2009, assault occasioning actual bodily harm and theft for which he was sentenced to 3 years' imprisonment. It is on account of these convictions that the respondent sought to deport the claimant
4. For the reasons set out in the letter of 29 October 2013, the respondent did not accept that the claimant was at risk on return to Somalia and concluded [9] that he had not in the past been granted Indefinite Leave to Remain as a refugee and his father's asylum claim had been rejected.
5. After the appeal to the First-tier Tribunal has been lodged, it was adjourned at the request of the respondent. It then came before Judge Herlihy. As is recorded at [21]:

21. The appeal...listed for hearing... on 3 October 2014 ... was adjourned by Judge Webb at the request of the Respondents to allow the Respondents to consider if the Appellant had been invited to rebut the presumption that section 72 of the 2002 Act applied to his case as it appeared that the appellant was a recognised UN Convention refugee having entered the United Kingdom on a UN travel document and the Family Union traditions and article 33 (2) of the Refugee Convention (Exclusion from Protection) was relevant. The Appellant's representative stated that he had at that hearing produced a copy of the travel document issued to the Appellant to enter the United Kingdom and a copy of his father's convention document copies of which appear in the Appellant's appeal bundle.

...

23. At the commencement of the hearing the Respondent's representative stated that he did not have the Respondent's bundle and he had no record of what transpired at the earlier hearing. He requested a brief adjournment to make enquiries which I granted. On return to court the Respondent's Representative said that he had been unable to contact office in Liverpool being the criminal case with team but accepted that if the Appellant was a refugee is the issue of revocation of his refugee status had not been considered in accordance with Home Office policy. He could not access the Appellant's father's file to establish whether he had been granted refugee status but conceded (after speaking to a senior caseworker) in all likelihood that the Appellant's father had been recognised as a refugee and that the Appellant had been granted refugee status as a family member.

6. The First-tier Tribunal found: -
 - (i) that it was very likely that the claimant is a refugee[25]; that it was very likely that his father had been granted refugee status say, and, that the facts are summarised in paragraph [6] of the Respondent's decision letter was incorrect;

- (ii) that the respondent's decision was not in accordance with the law as she had not conceded that the claimant is a refugee and thus had given no consideration as to the policy on the revocation/cancellation of the claimant's refugee status;
7. The First-tier Tribunal thus allowed the appeal on the basis that it was not in accordance with the law.
8. The respondent sought permission to appeal on the grounds that:-
- (i) the judge failed to make findings on relevant matters, that is whether at the date of the hearing the claimant was at risk on return to Somalia; or, whether he was to be excluded on account of his criminal offending [2];
 - (ii) the fact that the decision letter may have contained errors did not obviate the requirement for the Claimant to demonstrate that he met one of the exceptions within sections 32 (2) or (4) of the UK Borders Act 2007;
 - (iii) the finding that the decision was not in accordance with the law was inadequately reasoned;
9. On 10 June 2015 Upper Tribunal Judge Davidge granted permission on all grounds. stating:-

The grounds, while asserting the fact with the Appellant's membership of a majority clan makes the Appellant's asylum claim untenable, raises an arguable ground in the context of an absence of reasoning in respect of the judge's finding that the Appellant has established, on the basis of his arrival in the context of family reunion on his father's asylum status and is arguable as a risk assessment needs to be located in the present.

Submissions

10. Mr Norton sought to rely on additional documents which he accepted were not before the First-tier Tribunal. These appear to show that there has been errors in the identity of the claimant and that he may not, in fact, have been entitled to enter the United Kingdom under the family reunion provisions; and, that his father had not been recognised as a refugee. Mr Norton accepted that the respondent would need to issue a supplementary refusal letter.
11. Ms Rahman submitted that in light of what had been said by the Presenting Officer at the appeal before the First-tier Tribunal, the judge had been entitled to conclude that the claimant had previously been recognised as a refugee. She submitted that it flowed from that that the respondent should then have considered her policy on revocation of asylum, not least given the safeguards therein and the involvement of UNHCR. She submitted that the considerations in that policy were different from the consideration of whether the claimant is a refugee. She did,

however, accept (as did Mr Norton) that were an error of law to be found, the matter would need to be remitted to the First-tier for a fresh decision on all issues.

Findings

12. I consider that, on the basis of the submissions made to the judge by the presenting officer, she was entitled to conclude that the claimant had been recognised as a refugee. Mr Norton did not seek to persuade me that the evidence said to show the contrary was of such an incontrovertible nature such that it could be taken into account at this stage; in any event, it is contested by the claimant and a significant fact-finding exercise (including allegations of deception) would need to be undertaken with regard to the propositions now presented.
13. As the judge was entitled to proceed on the basis that the claimant is a refugee, then it follows that, as Ms Rahman submitted, the respondent erred in failing to follow her own revocation policy as set out in the documents produced to the Tribunal. Mr Norton did not demur from that proposition. Further, and in any event, the respondent would have needed to consider whether (albeit that the claimant was not entitled to refugee status) the risks giving rise to the fear of persecution remain and engage articles 2 or 3 of the Human Rights Convention.
14. In the circumstances, the decision of the First-tier Tribunal was one to which it was entitled to come. Adequate reasons were given why the decision was not in accordance with the law, and thus remained before the respondent to make a fresh, lawful decision. Whether that would now give rise to an in-country right of appeal is not a matter that concerns me.

Summary of conclusions

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
2. I maintain the anonymity order put in place by the First-tier Tribunal

Signed

Date: 3 December 2015



Upper Tribunal Judge Rintoul

