



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02856/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> July 2016

Decision & Reasons Promulgated  
On 19<sup>th</sup> July 2016

Before

UPPER TRIBUNAL DEPUTY JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IBRAHIM ISSE  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr Walker, Senior Home Office Presenting Officer  
For the Respondent: Mr Murphy, Counsel

**DECISION AND REASONS**

1. This is an appeal brought by the Secretary of State for the Home Department against the decision of a First-tier Tribunal (Judge Petherbridge) in which it allowed the Respondent's appeal against the Secretary of State's decision to refuse him asylum

and to make a deportation order against him under Section 32(5) of the Borders Act 2007.

2. Although the Secretary of State brings this appeal, for the sake of clarity, I shall refer to the parties as they were in the First-tier Tribunal; the Secretary of State as the Respondent and Ibrahim Isse as the Appellant.

### **Background**

3. The Appellant is a citizen of Somalia (born 8<sup>th</sup> August 1967). He entered the UK in 1991 and was given leave to remain exceptionally. That leave expired in June 1997. He never sought any other leave and therefore has remained here without leave since 1997.
4. In 1999 he married his wife, a Somali national who subsequently became a British citizen. There are three children of the marriage, all of whom are British citizens and who are now aged 12, 13 and 15 years respectively.
5. On 3<sup>rd</sup> May 2012 the Appellant was convicted of an offence of conspiracy to defraud and sentenced to a term of imprisonment of fourteen months. Following that conviction, the Respondent made a deportation order against the Appellant dated 24<sup>th</sup> April 2015.
6. The Appellant appealed the making of the deportation order and claimed he could not return to Somalia on protection grounds on account of his clan membership and that the exceptions to paragraph 399(a) and (b) of the Immigration Rules applied, in that it would be unduly harsh on his wife and children if he were to be deported. It has always been accepted by the Respondent that it would be unduly harsh to expect the Appellant's wife and children to relocate to Somalia.

### **The FtT Hearing**

7. The First-tier Tribunal found that the Appellant's claim to need international protection, was not founded. So far as that part of the appeal is concerned, there is no challenge to those conclusions and accordingly I see no reason to disturb the findings made in that respect. The FtT however did allow the Appellant's appeal under Article 8, ECHR private life considerations concluding it would appear that the appellant met the exceptions to paragraph 399(a) and (b).

### **Permission to Appeal**

8. The Respondent sought and was granted permission to appeal. The grounds seeking permission asserted that the FtT had given inadequate reasons for finding that the Appellant met the exception in paragraphs 399(a) and 399(b).
9. Permission was granted in brief terms simply saying *a material error of law is identified by the grounds, inadequate reasons having been given for findings made.*

### Error of Law Hearing

10. Mr Walker for the Respondent relied on the grounds seeking permission and said that the decision, so far as the deportation issue was concerned, was one where the judge had failed to give any identifiable reasons for the conclusions he had made. This rendered the decision unsustainable and that part of the decision therefore should be set aside and remade.
11. Mr Murphy argued that when the decision is read as a whole, it sets out and gives adequate reasons for the findings which the judge made. He said the judge referred to the evidence before him at [8] and to the chronology at [12]. The judge considered whether the Appellant could be said to be at least "sharing responsibility" for the three children and by tying that into [63] had arrived at a sustainable conclusion that it would be unduly harsh upon them to have to remain in the UK without the Appellant. The decision should stand.

### Consideration

12. I find I disagree with Mr Murphy's submissions. I find the decision concerning the deportation aspect must be set aside and remade. Having reserved my decision, I now give my reasons. Whilst I accept the argument that reasons only have to be adequate, in the sense that brief reasons will suffice I find that in this decision, the reasoning is so scant as to make it unclear whether the judge has turned his mind to the issues in front of him. A significant part of this appeal turned on the best interests of the Appellant's three children. The Appellant's claim amounts to saying that he 'shares' the care of them. The Appellant's wife however would remain in the UK as the children's primary carer. At [57] the judge says that the evidence is that the Appellant and his wife 'share' responsibility for the children but gives no discernible reasoning for that analysis, because he goes on to accept in the same paragraph that the Appellant's wife works at best 24 hours a week and not during the school holidays. He then says at [63] I find that in the light of the circumstances of the Appellant at least sharing responsibility for looking after his children who are at an all important part of their education that it would be unduly harsh upon them to have to remain in the United Kingdom without the Appellant. That is a broad sweep assertion and I can find no reasoning to show clearly why the circumstances alluded to amount to "unduly harsh" ones.
13. Likewise at [69] the judge simply states that he finds that there are very compelling circumstances that the Appellant should not be deported and then failed to give a reasoned justification for that assertion. Indeed my impression of a lack of analysis justifying conclusions is reinforced at [71] where the judge sums up by saying that this is '*just one of those cases where there are compelling circumstances to allow the appellant to remain in the United Kingdom notwithstanding the automatic deportation provision*'. That, I find, is not sufficient or adequate reasoning in a case of this type.
14. I find therefore that the decision so far as the Section 23(5) element is concerned must be set aside and remade. I restate here that no challenge was raised on the asylum

protection issue and I see no reason to disturb the findings on that part of the decision.

15. Both representatives were in agreement that should I find an error of law in the First-tier Tribunal's decision making, then the appropriate course would be to remit the matter to the First-tier Tribunal for that Tribunal to remake the decision. I agree with that course. Full and properly reasoned findings of fact need to be made in the light of the oral and documentary evidence available. I direct that that the matter is remitted to that Tribunal (not Judge Petherbridge) accordingly.
16. The findings of fact in relation to the Appellant's asylum/protection claim are preserved. There is no reason to disturb those findings. Fresh findings of fact will need to be made only on whether the consequences of deportation in the Appellant's case would result in unduly harsh consequences for the Appellant's children and partner.

### **Notice of Decision**

The determination of the First-tier Tribunal which is dated 26<sup>th</sup> April 2016 is set aside. I direct that the appeal be remitted to the First-tier Tribunal to remake the decision (not Judge Petherbridge).

No anonymity direction is made.

Signed C E Roberts

Date 19 July 2016

Upper Tribunal Deputy Judge Roberts