



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

Appeal Number: HU/06301/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 25 August 2017**

**Decision & Reasons Promulgated
On 8 September 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**BASHIR MOHAMOUD ROBLE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Somalia, has permission to challenge the decision of First-tier Tribunal (FtT) Judge Hembrough sent on 19 June 2017 dismissing on human rights grounds his appeal against a decision of the respondent to make a deportation order on 28 April 2017 and on 29 April

2017 and 11 May 2017 respectively, to refuse the appellant's human rights and protection claims.

2. Before me the appellant was unrepresented. I explained that I would do my best to assist him present his case. Shortly before the hearing the appellant produced a witness statement dated 15 August 2017 stating that he was gay and would be at risk on return to Somalia for that reason. There was also a witness statement dated 28 July 2017 from a Mr Sanchez Marley Weaver stating that he was the appellant's boyfriend. There was also produced a survey of COI sources regarding the situation of gays in Somalia. I explained to the appellant that as the evidence was not before the FtT judge I could not have regard to it in deciding whether the judge erred in law. I could only have regard to it if I decided to set aside the judge's decision for a material error of law.
3. I then heard submissions from Mr Staunton (who agreed to go first in order to assist the appellant know the case he had to meet) and the appellant. Leaving aside the new evidence identified above, the submissions of both parties broadly covered the same ground as the appellant's written grounds of appeal and the respondent's Rule 24 notice.
4. I am satisfied that the FtT judge did not materially err in law.
5. The first ground on which the appellant relies is that the judge erred in holding that there was an "economic boom" in Mogadishu, given recent reports of a Third Famine and a WHO assessment that more than 6.2 million in Somalia need urgent humanitarian aid. I find this ground is not made out. There are two aspects to this. First of all, the appellant was represented at the hearing before the FtT judge and his representative (Mr Dhanji) expressly stated that he placed no reliance upon asylum or humanitarian protection grounds and it is clear from his submissions that he did not seek to argue Article 3 ECHR grounds either. The appellant has failed to demonstrate that Mr Dhanji did not act on instructions in choosing to confine the grounds to Article 8 related matters. Second, in assessing factual matters of relevance to deciding whether there would be "very significant obstacles" to the appellant's integration into Somali society, the judge's assessment of the likely economic circumstances the appellant would encounter if returned to Mogadishu was based squarely on the Tribunal country guidance given **in MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442 (IAC)** at [344]- [349]. The appellant's representative did not seek to challenge the findings of fact set out in **MOJ** and the appellant did not adduce evidence capable of causing the judge to depart from the findings of fact in **MOJ**. (As regards the COI sources the appellant cites in his grounds of appeal to the Upper Tribunal, they relate to Somalia and not specifically to Mogadishu and the backdrop of severe drought and consequent hardships for many in Somalia was not significantly different when the UT in **MOJ** heard that case.)

6. The appellant's second ground contends that the judge erred in considering that he had significant connections with Somalia. In particular the grounds state that the appellant disavows what was recorded in his completed Clan Questionnaire in 2010 when he wrote that he was a member of the Hawiye clan. I consider this ground seeks merely to disagree with the judge's findings and to ignore as well that there was a decision by the First-tier Tribunal in 2011 dismissing his asylum appeal in which that Tribunal noted in paragraph 26 that the appellant's claimed clan was Hawiye. This ground also founders on the fact that the judge was clearly unimpressed by the appellant's evidence and that of his brother and sister regarding the appellant's linguistic and cultural connections. The same goes for the appellant's disagreement over whether he would have any family connection in Somalia. The judge's finding regarding these were set out at paragraphs 54-56 as follows: -

"54. Similarly having grown up in a large Somali household I find that that (sic) the Appellant continues to have a cultural connection to his country of origin. It is in my view reasonable to anticipate that the food, cultural norms and traditions of Somalia will all be familiar to him. In passing I note that the female family members who were in attendance at the hearing wore traditional attire.

55. Whilst I accept that having come to the UK as a young boy he may not be entirely familiar with the clan culture of Somalia I reject the assertion that this has never been the subject of discussion in the household. He was aware when completing his Somali clan questionnaire in 2010 that he was a member of the majority Hawiye clan.

56. I also note that his mother returned to that country in 2009 and there is a suggestion in the 2011 appeal decision that she had purchased property. The Appellant's evidence was that she had lived on the border between Somalia and Kenya with extended family members. It was not explained why she would travel to the border area when she and her family come from Mogadishu although I accept that the security situation was somewhat different then. Be that as it may I find that it is reasonable to infer from her conduct that there was a family/clan connection in Somalia from whom she was able to access assistance. It (sic) find it unlikely that an elderly woman in poor health would go there to live on her own without any kind of support. Given what I find to be unreliable and less than candid nature of the evidence given by the Appellant and his witnesses as regards his antecedents in the UK and his flight to Kenya I reject that assertion that there is no continuing family/clan connection in Somalia from whom the Appellant could seek assistance upon return."


7. I consider the judge's findings in the above paragraphs were entirely within the range of reasonable responses.
8. The appellant's written grounds further cited that the judge erred in failing to take into account the European Directive on Rehabilitation of Drug Addicts and Criminals. However, this Directive had at best peripheral relevance to the assessment the judge had to make regarding the issue of whether there would be very significant obstacles to the appellant's returning to Mogadishu.
9. The grounds also contend that the judge should have understood that even if the appellant won his appeal he would still be liable to deportation which would be a 'sufficient deterrent'. That submission is, with respect, nonsense. Liability to deportation may be a precondition for its lawful exercise but the conditions imposed by the Immigration Rules and the NIAA 2002 must still be met and one does not satisfy such conditions by merely asserting a precondition.
10. For the above reasons I conclude that the FtT judge did not materially err in law. Accordingly the judge's decision must stand.

Notice of Decision

11. As I explained to the appellant at the end of the hearing, I could only have regard to his new evidence if I found an error of law. Not having found such an error I cannot have regard to it. It is a matter for him whether he wishes to make further representations to the Secretary of State based on this new evidence. It is then a matter for the Secretary of State whether she considers such evidence to amount to a fresh claim or otherwise to justify reconsideration. It is not a matter for the Upper Tribunal.
12. No anonymity direction is made.

Signed

Date: 7 September 2017



Dr H H Storey
Judge of the Upper Tribunal