



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03125/2016

THE IMMIGRATION ACTS

Heard at North Shields
On 26 January 2018

Decision Promulgated
On 1 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Q M I
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Boyle, Halliday Reeves Law Firm
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant because of the matters identified at [16] to [19] of the Judge's decision and because there is no public interest in identifying the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hindson promulgated on 18/05/2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 01/01/1995 and is a national of Ethiopia, of Somali ethnicity. On 16/03/2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hindson ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 06/09/2017 Judge Dineen gave permission to appeal stating

1. The appellant seeks permission to appeal, in time allowing for the course of post in sending the decision to the appellant, against a decision of the First-tier Tribunal (Judge Hindson) who, in a decision promulgated on 18/05/17 dismissed the appellant's appeal against the respondent's decision to refuse her international protection.

2. The appellant's case, set out with admirable clarity and succinctness, boils down to the question whether, given conditions of violence in the appellant's home area which are described in the decision, in particular at [29] meet the article 15(c) of the qualification directive.

3. To be granted permission to appeal, the appellant must show that there is an arguable case that the Judge made a material error of law.

4. An error of fact may amount to an error of law if, but only if, the Judge-

- Failed to take into account a material fact.
- Took into account an immaterial fact.
- Acted perversely by reaching a factual decision which no reasonable Judge could have made on the evidence.
- Failed to give adequate reasons for a material finding of fact.

5. Relevant principles set out in the judgement of the Court of Appeal in Hamid v Khalid [2017] EWCA Civ 201 in particular at [26 - 30]

6. I am satisfied that it is at least arguable that the Judge's findings at [30] falls within the criteria above.

The Hearing

6. (a) Mr Boyle moved the grounds of appeal. He told me this case is all about article 15(c) of the Qualification Directive and the risk of indiscriminate violence to the appellant in her home area. He took me straight to [29] of the decision and told me that there the Judge made findings which favour the appellant. At [29] the Judge found that there is ongoing violence in the appellant's home area and that the police

there commit atrocities. The Judge finds at [29] that the appellant is a lone female without protection.

(b) Mr Boyle referred me to [30] of the decision and told me that there the Judge finds that the level of violence in the appellant's home area does not cross the threshold to engage article 15(c). He told me that there is a contradiction between [29] and [30], and that [30] of the decision does not contain adequate reasoning, particularly in light of the findings made in [29]. He asked me to allow the appeal and to set the decision aside, preserving the findings at [29], and then to remit the case to the First-tier for full consideration of the reasonableness of relocation.

7. For the respondent, Mr Diwnycz told me that this had been a finely balanced appeal, but that the decision is a difficult decision to defend because internal relocation has not been considered. He told me that the Home Office position is that even if there is an internal armed conflict sufficient to engage article 15(c) of the Qualification Directive in the appellant's home area, then internal relocation is still a viable option but has not been considered by the Judge. The absence of consideration of internal relocation weakens the overall decision. He agreed with the suggestion that this case should be remitted to the First-tier to consider the question of internal relocation.

Analysis

8. Article 15 of the Qualification Directive defines serious harm as follows:

“Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

9. Paragraph 339CA of the Immigration Rules states:

“...Serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

10. In Elgafaji Case C-465/07 the Court held that the harm defined in Article 15 (c) covered a more general risk of harm than the harm defined in Articles 15 (a) and (b) (para 33). The threat was not simply of specific acts of violence, but more generally to a civilian's life or person. Describing the violence as indiscriminate implied that it may extend to people irrespective of their personal circumstances. The word “individual” was to be understood as covering harm to civilians irrespective of their

identity where the degree of indiscriminate violence characterising the armed conflict taking place reached such a high level that substantial grounds were shown for believing that a civilian, returned to the relevant country or region, would, solely on account of his presence on the territory, face a real risk of being subject to the serious threat. Recital 26 implied that a risk linked to the general situation in the country was not as a rule sufficient to establish that the conditions set out in Article 15 (c) had been met but it allowed for the possibility of an exceptional situation which would be characterised by such a high degree of risk that substantial grounds would be shown for believing that the person would be subject individually to the risk in question.

11. The concept of a sliding scale comes from Elgafaji – the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection (para 39). The nature of the inquiry was explained in MOJ & Ors Somalia CG [2014] UKUT 00442 (at 32) as two-pronged in that (a) it asked whether the level of violence was so high that there was a risk to all civilians, (b) it asks that even if there is not such a general risk, is there a specific risk based on the sliding-scale notion. The sliding-scale approach recognised that a person might still be accorded protection even if the general level of violence is not very high if they are able to show that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence.

12. The appellant's bundle contains a number of background materials. The appellant relied on

- (i) Writenet/ UNHCR Ethiopia; a sociopolitical assessment, 01/05/2006
- (ii) US Department of state, 2016 country reports on human rights practices: Ethiopia. 03/03/2017
- (iii) International crisis group, Ethiopia: prospects for peace in Ogaden, 06/08/2013
- (iv) Landinfo country of origin information centre (Norway), query response: Ethiopia: the special police (Liyu Police) in the Somali regional state 03/06/2016
- (v) Human Rights Watch, Ethiopia: no justice and Somali region killings 05/04/2017

13. The background materials disclose

(a) Ogaden is the unofficial name of the Somali Region of Ethiopia, the territory comprising the eastern portion of Ethiopia. The inhabitants are predominantly ethnic Somali Muslims. In 2007, the Ethiopian Army launched a military crackdown in Ogaden after Ogaden rebels killed dozens of civilian staff workers and guards at an Ethiopian oil field. The main rebel group is the Ogaden National Liberation Front under its Chairman Mohamed O. Osman, which is fighting against the Ethiopian government. Some Somalis who inhabit Ogaden claim that Ethiopian military kill civilians, destroy the livelihood of many of the ethnic Somalis and commit crimes

against the nomads in the region. However, testimony before the United States House of Representatives Committee on Foreign Affairs revealed massive brutality and killings by the ONLF rebels, which the Ethiopian government labels "terrorists."

(b) The extent of the conflict in Ogaden is difficult to gauge because of a media blockade in the Ogaden region. Some international rights organizations have accused the Ethiopian regime of committing abuses and crimes that "violate laws of war," as a recent report by the Human Rights Watch indicates. Other reports have claimed that Ethiopia has bombed, killed, and raped many Somalis in the Ogaden region, while the United States continues to arm Ethiopia in the United States' ongoing War on Terror in the Horn of Africa.

(c) The Ogaden National Liberation Front is a separatist rebel group fighting for the right to self-determination for Somalis in the Somali Region of Ethiopia. The ONLF, established in 1984, demands the autonomy of this region and has claimed responsibility for several attacks since the beginning of 1994 aimed at Ethiopian forces in the area, which the government considers a region under the new federal system. The area of the Ogaden region stretches at least about 330,000 square kilometres and has over 7 million people, mainly from the Absame Somali tribe. The ONLF claims that Ethiopia is an occupying government, despite the Ogaden being represented in the Ethiopian federal government by groups including the opposition Somali People's Democratic Party (SPDP).

14. In Diakité v Commissaire général aux réfugiés et aux apatrides (Case C-285/12) CJEU (Fourth Chamber), it was held that on a proper construction of Article 15(c) of Directive 2004/83/EC, an internal armed conflict existed, for the purposes of applying that provision, if a State's armed forces confronted one or more armed groups or if two or more armed groups confronted each other. It was not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor was it necessary to carry out a separate assessment of the intensity of the armed confrontations in order to establish whether the condition relating to armed conflict had been met. The finding that there was an armed conflict was not to be conditional upon the armed forces involved having a certain level of organisation or upon the conflict lasting for a specific length of time.

15. [29] and [30] of the decision makes it clear that the Judge considered the background materials. The Judge's findings at [29] are manifestly drawn from the background materials. At [30] of the decision the Judge compares the situation described in the background materials with areas of Iraq, in which it has been judicially determined that there is an internal armed conflict which engages article 15(c) because of the risk to ordinary civilians. The Judge takes a geographical area in which there is a clearly defined article 15(c) risk, he compares the risk there to the risks he sets out in [29] of the decision and finds that the level of violence in the appellant's home area does not meet the article 15(c) threshold.

16. The Judge's finding at [30] is a finding which is reached after considering the background materials in detail. There is no tension between [29] & [30] of the

decision. The Judge makes a clear finding that notwithstanding the atrocities committed by the Liyu police against the Ogaden people, and the increased risk that the appellant faces as a lone female, for the reasons given at [30] the level of violence does not cross the article 15(c) threshold. That is a finding which is well within the range of reasonable conclusions available to the Judge.

17. Having found that article 15(c) of the qualification directive is not engaged, there was no need for the Judge to consider internal relocation. Internal relocation would require to be considered if the Judge found that the appellant was entitled to humanitarian protection in the Ogaden region. Because the Judge found that the article 15(c) threshold is not crossed, internal relocation does not require consideration.

18. Having taken correct guidance in law and made findings of fact which are not challenged, the Judge reached his conclusion. It is not a conclusion that the appellant likes but it is a conclusion which was reasonably open to the Judge on the facts as he found them to be.

19. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

20. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant might not like the conclusion that the Judge has come to, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

21. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

22. No errors of law have been established. The Judge's decision stands.

DECISION

23. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 18 May 2017, stands.

Signed *Paul Doyle*
Deputy Upper Tribunal Judge Doyle

Date 31 January 2018