



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04791/2017

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2018

Decision & Reasons Promulgated
On 6 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

SADA NUR ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Burrett of Counsel
For the Respondent: Mr C Avery, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of the First-tier Tribunal (FTT) to dismiss his asylum. That appeal was against the decision of the Secretary of State to refuse his application for humanitarian protection, human rights protection and refugee status. The appeal came before First-tier Tribunal Judge Oliver (the judge) on 16 August 2017. His decision was promulgated on 7 September 2017. The judge allowed the appeal on human rights and humanitarian protection grounds but refused the appeal on grounds that the appellant claimed to be a refugee.

2. The appellant was given permission to appeal to the Upper Tribunal by Upper Tribunal Judge Lindsley who decided that it was arguable that there was a material error of law in the First-tier Tribunal Judge's approach to the risk on return.
3. The current appeal came before me for an oral hearing on 6 April 2018. On 25 April 2018 I decided that the decision of the FTT contained a material error of law in relation to the approach to internal relocation having regard to the guidance given by the Upper Tribunal in the case of **MOJ [2014] UKUT 442**. However, although the Immigration Judge had made comprehensive findings in relation to all issues, in relation to the internal relocation issue, it was necessary to consider all the background evidence further before reaching a decision. I therefore directed that a further hearing be held to consider whether the appellant had an internal relocation alternative to seeking international protection in the UK. Both parties were given an opportunity to file any additional updating country guidance including recent case law or file an updated witness statement if so advised, but they did not avail themselves of that opportunity.

The hearing

4. On the return day I heard short submissions on behalf of both parties. The respondent addressed the Tribunal first. Mr Avery said that the judge had left his reasons for not giving the appellant or recognising the appellant as a refugee somewhat hanging in the air. In fairness, Mr Avery recognised that the judge could have explained himself more clearly.
5. Mr Burrett noted that the judge's findings should have led him to the conclusion that the appellant qualified as a refugee. Helpfully, he reminded the Tribunal of the criteria for the safe return of a person to Mogadishu, Somalia in the case of **MOJ**, in paragraph (ix) of the head note of that case. He stated that the factors which needed to be considered included the length of absence of the person concerned, the presence of nuclear family members in that city or other close relatives who might assist the appellant in re-establishing himself on return and the person's access to financial resources. The prospects of securing a livelihood was also a factor as well as the availability of remittances from abroad, the means of support during the time he has spent in the United Kingdom and why his ability to fund his journey to the west no longer enabled him to seek financial support on return. There needed to be a careful assessment of all the circumstances of each case. In Mr Burrett's submission the factors in paragraph (ix) of the head note of **MOJ**, led to the conclusion that it would indeed be unduly harsh to expect the appellant to safely return to Mogadishu.

Conclusion

6. The soul issue relates to the prospect of safe internal relocation. The reasons given by the Immigration Judge were inadequate. Having reconsidered the issue I have concluded that there was insufficient evidence on which the Tribunal could conclude that internal relocation it was a safe alternative to the appellant seeking international protection. The appellant is still only 17, having been born on 26 November 1999,

although that has been disputed. He will therefore be 18 on 26 November 2018. There is no satisfactory evidence that he has family members in Mogadishu and it therefore seems that he will be returning to a city where he has little prospect of employment or means of support.

7. The respondent fairly conceded the problems with the First-tier decision in its Rule 24 response.
8. Given the error of law identified, I am persuaded that it is appropriate to amend the decision of the FTT by allowing the appeal to the extent of finding that the respondent ought to have granted him refugee status.
9. Accordingly, the appellant's appeal to the Upper Tribunal against the adverse decision of the FTT to dismiss the appellant's appeal against the refusal of refugee status is allowed. The Upper Tribunal will substitute a decision to allow the appeal against the respondent's refusal on that basis. It follows that the FTT's decision in relation to the other claims stands.
10. No anonymity direction was made by the FTT and I make no anonymity direction.

Signed

Date 5 June 2018

Deputy Upper Tribunal Judge Hanbury