



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08638/2016

THE IMMIGRATION ACTS

Heard at North Shields
On 22 May 2018

Decision & Reasons Promulgated
On 30 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

A. D.
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Selway, Solicitor, Brar & Co Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Somalia, who entered the UK illegally, and claimed asylum on 3 February 2016. That protection claim was refused on 16 July 2016. His appeal against that refusal came before the First-tier Tribunal at North Shields when it was heard by First-tier Tribunal Judge Cope. The appeal was dismissed on asylum and human rights grounds in his decision promulgated on 4 September 2017.
2. The Respondent's application for permission to appeal was granted by First tier Tribunal Judge Ford on 6 November 2017. When the hearing of this appeal was called on before me, the parties confirmed that no application to introduce evidence under Rule 15(2A) of the Upper Tribunal Procedure Rules had ever been made. A Rule 24

Reply of 3 January 2018 was lodged by the Respondent, which did not accept any error had been made by the Judge. Thus the matter comes before me.

3. There are two grounds, as drafted. The first is a complaint that the Judge went behind a concession of material fact that had been made by the Respondent; a concession that he was a member of the "Reerow-Xassan". The second is a complaint that as a member of the Reer Aw Hassan (the clan he actually claimed to be a member of), the Judge should have accepted; (a) that the Appellant was a member of a "minority" clan, and, (b) that as such, he faced a real risk of persecution and serious harm, should he be returned to Mogadishu.
4. Although different phonetic spellings appear in different documents, I am satisfied that the Appellant always identified himself as a member of the Reer Aw Hassan clan. It is clear that the Respondent's concession in the reasons given for the refusal of his claim, was that he was a member of the "Reerow-Xassan" [RFR #10]. It is not clear how that occurred, but whilst one would ordinarily speculate that it was because the case worker was considering a variation of a phonetic spelling of the same clan, in this case no such variation appears in the documents before me. Prior to the appeal hearing the sole document referring to such a spelling that I can identify is the refusal letter.
5. This error, and I am satisfied that it was an error, was doubly unfortunate because not only did it plainly cause confusion at the hearing of the appeal as to what the Appellant's true clan membership was, but it also led to the Respondent adopting a position in the refusal letter (maintained at the hearing) that she could identify little or no objective evidence upon the Reerow-Xassan.
6. The reality is of course that the Appellant had been consistent in his claim to be a member of the Reer Aw Hassan, and there is ample reliable objective evidence available upon that clan, even if the sources disagree upon its status. Surprisingly neither representative at the hearing before me appeared to be familiar with that evidence. The Judge was not, for example, taken to the report of the Joint British Danish and Dutch fact finding mission to Kenya, dated September 2000, "Report on Minority Clans in Somalia". Annexe 2 to that report places the Reer Aw Hassan as a sub-clan of the Shekhal, originating from the region of Hiran. Section 10 of that report notes that the sources consulted by the mission differed over whether the Shekhal were a minority clan in their own right, or, associated to the Hawiye as a sub-clan of the Hawiye. Thus the Reer Aw Hassan, would form a sub-clan of the Shekhal, and could be a sub-sub-clan of the Hawiye. They were however noted to be a sufficiently large and significant group to be represented with two seats within the minority grouping of the Alliance Clans Community in the Transitional National Assembly. In this respect they were treated differently to the other sub-clan of the Shekhal, the Logobe, who were noted as having been allocated seats within the Hawiye clan-family allocation. The Reer Aw Hassan are however a respected religious sub-clan, as designated by the prefix "Aw".
7. I note that there is also an analysis of the position of the Shekhal's sub-clans to be found in MA & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 91, which again neither party appears to have drawn the Judge's attention to.

8. Before me Mr Selway argued that over the course of his decision [31-50] the Judge had demonstrated that he had in truth gone behind the Respondent's concession of clan membership, and that as a result, his formal acceptance of the concession [53] was in the circumstances to be treated as of no consequence. It was accepted that neither bias nor perversity had been alleged, but argued that if the Judge had not intended to go behind the concession, then he would have had no reason to rehearse the evidence, and the issues, that he did rehearse.
9. There is, bluntly, no merit in this complaint. The only concession that the Respondent had made was of membership of the "Reerow-Xassan", which was not a phonetic spelling that originated in the Appellant's witness statement of 29 April 2016 [B2 #1], or from what the Appellant had said at full interview [C8 Q13]; indeed, as set out above, I have not been able to ascertain its origin within the papers before me. There appears to have been no formal concession made by the Respondent to the Judge that this was a mistake, and that the Appellant was a member of the Reer Aw Hassan, as he had always claimed to be.
10. Thus the Judge had first to identify that the reality was that the concession as to the "Reerow-Xassan" was a mistake, and conclude either that the Respondent had always meant to concede membership of the "Reer Aw Hassan", or, find for himself that the Appellant was a member of the Reer Aw Hassan as he had always claimed to be. That is what he did [31-33]. The passages within the decision upon which Mr Selway focused in seeking to make out this argument, are in my judgement simply indicative of the difficulties with which the Judge was faced, as a result of the stance taken by the Respondent, and the failure of the parties to place before him the materials I have referred to above. I note that on the issue of clan membership, and its consequences, the Appellant simply provided a short paragraph taken from Wikipedia, which asserted (without offering any source for the assertion) that the Reer Aw Hassan are Ashraf. The Judge was in my judgement quite right to place little weight upon this document for the reasons that he gave [44-46] particularly given; (a) that the Appellant did not himself consider his clan to be part of the Ashraf, and, (b) that such a claim is inconsistent with the materials I have referred to above, which are sourced, and reliable. The assertion, contained in the grounds, that the Judge's approach to the Wikipedia article was "illogical" is unfounded, and in my judgement improper.
11. That was not however the end of the Judge's task in relation to the evidence upon the Appellant's clan membership, because it is clear that the parties were not agreed before the Judge upon whether the Reer Aw Hassan were a major, or a minor clan, or a sub-clan, or a sub-sub-clan of the Hawiye a major clan. That should, in my judgement, have been a matter that the representatives ought to have been able to identify and agree upon in advance of the hearing. The Appellant had identified the Reer Aw Hassan as a sub-clan of the Al-Shekhal, and historically linked to and protected by the Hawiye, a majority clan. This was not conceded, although it is evidence that is entirely consistent with the materials I have referred to above, and to which the Judge was not referred. Thus the Judge tried to elucidate the position by reference to what was a plainly confused evidential picture – even if the confusion did not arise from the Appellant, but from those who had questioned him from time to time, or had sought to translate and transcribe what his evidence was. Looking for himself in the County

Information Note of June 2017 “South and Central Somalia; Majority clans and minority groups” the Judge felt unable to identify reliable evidence, and so, quite properly, he raised with the parties his concern over the reliability of the evidence upon the issue [48-51]. Ultimately the Judge was therefore not satisfied that he had any reliable and cogent independent evidence before him that would allow him to identify whether the Reer Aw Hassan were a minority clan, or that they are linked to the Al Shekhal, or the Ashraf, or to any majority clan. This situation was clearly avoidable, had the appeal been properly prepared by either party. Properly assisted with the relevant materials the Judge would undoubtedly have concluded that the Reer Aw Hassan are a sub-clan of the Shekhal, as the Appellant had claimed, and that opinions differed as to whether they were in turn a sub-sub-sub clan of the Hawiye or merely historically associated with the Hawiye and able to claim their protection.

12. The Judge also had to make a finding as to where the Appellant’s “home area” within Somalia had been, within the context of the claim at his screening interview that his place of birth was Mogadishu, and the claim made in his April 2016 statement that his family had left Mogadishu when he was five, and that he had then lived all of his life in Buaale near Kismayo. The Judge rejected the claim that the home area was Buaale [87, 108], whilst the grounds assert baldly that this adverse finding is inconsistent with the analysis of the evidence contained elsewhere [57-60], there is no merit in that assertion. Nor did the Judge accept, as the grounds suggest he did, that the Appellant’s sister had been abducted and forced into marriage, or that his father had been murdered by Al-Shabab as a Sufi, or that the Appellant had been detained by Al-Shabab on a number of occasions and released only on the promise that he would join them and undergo military training, or that the Appellant had no contact with his mother and other family members [87].
13. The point of return to Somalia would be Mogadishu, and the Judge approached the appeal on that basis, and applied the guidance to be found in MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 442. There was no error in his doing so, and the grounds, as drafted, do not suggest one. Before me however Mr Selway sought to argue that the true situation in Mogadishu was not as analysed within MOJ and that the evidence that had been placed before the Judge should have resulted in his reaching a different assessment of the risks faced by a returnee. That complaint is simply not open to the Appellant; it was not part of the grounds, and no permission has been granted in relation to it. Moreover Mr Selway’s argument simply ignores the approach taken in FY (Somalia) [2017] EWCA Civ 1853, Said [2016] EWCA Civ 442, and RH v Sweden [2015] ECHR 786. Challenged on this, Mr Selway said that he accepted that MOJ continued to offer country guidance, but that he did not agree with it.
14. In my judgement it was well open to the Judge to conclude, as he did, that a member of the Reer Aw Hassan who had not come to the individual adverse attention of any group in Somalia, whether Al-Shabab or any other, was able to live in Mogadishu in safety. On the Judge’s findings the Appellant was in contact with his immediate family, and could look to them for support in re-establishing himself [109]. He would also have the package of benefits available to those who agree to return voluntarily. Thus there was no error in the conclusion that he would not face clan violence, whether

he was perceived by any individual to be a member of a sub-clan of the Shekhal, or a member of the Ashraf. Nor in the conclusion that he did not face a life without support in an IDP camp.

15. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, I therefore dismiss the Appellant's challenge, and confirm the decision to dismiss the appeal on all grounds.
16. The anonymity direction previously made is continued.

Notice of decision

The decision promulgated on 4 September 2017 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal is accordingly confirmed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
Deputy Upper Tribunal Judge J M Holmes

Date 25 May 2018