



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11979/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6th April 2018

Decision & Reasons Promulgated
On 12th April 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

A A

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Walker instructed by Hersi & Co solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as AA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. First-tier Tribunal Judge Walker allowed AA's appeal on Article 8 human rights grounds but dismissed his appeal on protection grounds. AA sought and was

granted permission to appeal the dismissal of his protection claim on the grounds:

- (1) It was arguable the First-tier Tribunal Judge failed to have adequate regard to the evidence before him that AA was from a minority clan;
- (2) It was arguable the First-tier Tribunal Judge had failed to have adequate regard to the deteriorating security situation in Somalia.

Ground 1

2. AA is married to a British citizen of Somali heritage. It is accepted by AA that she did not identify her clan either at the hearing before the First-tier Tribunal hearing (PA/00223/2016) on 10th August 2016 or at the hearing which led to the decision the subject of this appeal on 18th December 2017. In PA/00223/2016 First-tier Tribunal Judge Maciel found:
 23. Taking into account the circumstances of the family as claimed by [AA], I find it incredible that [AA's] mother would take her children to Mogadishu and through militia checkpoints. I find that this assertion undermines [AA's] assertion that the family are from a minority clan with no links to Mogadishu. The journey, even in 2006, would not be one without difficulty and danger with each checkpoint being a source of opportunity for trouble for the family. I reject [AA's] account that he is from a minority clan with no links to Mogadishu. I find that [AA] is not from a minority clan. I further find that the family would not have sought to spend three months in Mogadishu unless there were relatives or some other source of support there. I reject [AA's] account that his mother and siblings were killed in this way. I reject [AA's] account that they were on a holiday intended to last three months without knowing anyone there.
 24. ... [AA] was at pains to explain these two sisters left in Somalia with his neighbour are still children albeit there is no evidence before me as to their ages. They must be at least 10 years old as [AA's] claim is that they survived the bomb in the house on account of being out of the house in Mogadishu. However, there is no explanation as to where these young children were at the time. If they were infants, why were they not with the family at the time given that the assertion is that the family knew no one in Mogadishu and had no relatives there. If on the other hand they were older and able to be out of the house on their own, the likelihood is that they are now adults as the incident took place 10 years ago.
 25. I find it incredible that [AA] maintains that he only has contact with his sisters on 2 occasions since his arrival in the UK via the telephone owned by the neighbour who look(s) after them. I find that no reason has been put forward as to why he was not having regular contact with them as he had maintained that he had been responsible for them for the last 10 years and they were now living with an elderly neighbour with no protection.
....
 28. I reject [AA's] account that his uncle is not a source of support. When asked how he lived since the death of his mother if he never worked, he said that he did the best he could and neighbours assisted him when he had a problem, however, he was able to contact his uncle. [AA] maintained that the uncle paid the agent directly and made the arrangements with the agent directly. Accordingly, he was not aware of how much was expended on securing his safe passage to the UK. However, [AA] asserted that he was

expected to repay his uncle. I find it inconsistent that [AA] is not aware of how much he owes yet is required to repay the sum. I find that his uncle in Canada has been supporting him and his family in Somalia.

3. First-tier Tribunal Judge R L Walker in the determination the subject of this appeal found:
 33. ... First-tier Tribunal Judge Maciel ... held that [AA] was not a member of a minority clan, that Al Shabaab had no interest in him, that he would have strong family and clan links to Mogadishu, that he would have financial support and so could relocate there. [AA's] claims were not found to be credible. This is a very recent decision and there has been nothing raised today to show any fresh evidence which would affect this. It has been suggested that [AA's] wife is from a minority clan but...this has not been corroborated in any way. I conclude that the earlier findings still apply and [AA] alone has no claim to refugee status.
4. The only evidence relied upon by AA in this appeal to distinguish the findings in the earlier appeal is a witness statement from a cousin who stated that he was Reer Hamar and evidence that his wife had been granted asylum as a minority clan member in 2002. There was no evidence before the First-tier Tribunal Judge to undermine the findings of the Judge regarding the provision of support from the uncle in Canada, that there were relatives or some other source of support in Mogadishu, that he had been in contact with his two sisters or that his mother and two siblings had not died in the manner claimed.
5. It was reiterated before the First-tier Tribunal in this appeal that he had been at risk from Al Shabaab despite the findings of First-tier Tribunal Judge Maciel and despite the lack of any evidence relied upon to undermine those findings. The skeleton argument before the First-tier Tribunal did not seek to challenge any of those findings and the grounds of appeal relied upon the wife and cousin's evidence to support the contention that AA was a minority clan member. No further evidence was given regarding AA's claim that he had not worked in Somalia and had not gone to school, despite First-tier Tribunal Judge Maciel's comments as to the lack of evidence to support what appeared to be unlikely scenarios.
6. Although there was some evidence about Reer Hamar from AA's wife and cousin, First-tier Tribunal Judge Maciel reached his conclusions as to clan membership based on the evidence as a whole. When considered, the evidence before First-tier Tribunal Judge Walker cannot be seen as enabling a departure from the finding that AA is not from a minority clan. The fact that a cousin says he is Reer Hamar and his wife was recognised as a refugee some 16 years ago as a minority clan member does not, without more, mean that AA is a minority clan member when considered in the context of all the other findings of First-tier Tribunal Judge Maciel which have not been the subject of successful challenge in the past and are not the subject of challenge now. There is no material error of law by First-tier Tribunal Judge Walker in his finding that AA is not a minority clan member.

7. However, taking AA's claim that he is a minority clan member as true, there is still no material error of law. Ms Walker in submissions and in her skeleton continued to claim that AA had come to the adverse attention of Al Shabaab because of his volunteer work and that his mother and two siblings had been killed. This runs contrary to the unchallenged findings of First-tier Tribunal Judge Maciel and is unsustainable.
8. Ms Walker submitted that the economic boom referred to in *MOJ (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC) was no more. She submitted that clan membership was now important and particularly so because AA would not have access to financial support or accommodation; he would be at serious risk of ending up in an IDP camp. She said his only "work" had been handing out food for an NGO and he had no relatives upon whom he could call. His wife, she submitted, could support him and the two children because he cared for the children daily. If he were to leave the UK she would have to give up her employment and she would not be able to send him any money to financially support himself. Ms Walker admitted she could not point to any evidence that it was no longer possible to consider there to be an economic boom in Mogadishu but that it was reasonable to conclude that to be the case because of the drought, the increased attacks by Al Shabaab and that he had no skills.
9. AA has not worked in the UK. There was no evidence why he could not work or why unskilled labour would not be available to him given the position as set out in *MOJ* and the lack of any sustainable evidence to counter-act that. As a minority clan member, he may not have access to the kind of support that a majority clan member would have but the findings of First-tier Tribunal Judge Maciel are that there is family or other support available and he has been able to call upon his uncle to support him when needed. That he chose not to work in paid employment prior to coming to the UK is a matter from him. That there is access to significant sums of money is evidenced by the fact that his uncle could provide funds to enable him to travel to the UK. The evidence before First-tier Tribunal Judge Maciel was such that he did not accept his mother and siblings had died and there remain two sisters in Somalia in any event. There was no evidence that he would not be able to obtain employment as a minority clan member even if he has not worked for many years.
10. Even if First-tier Tribunal Judge Walker erred in finding AA was not a minority clan member, such error was not material – the evidence as it stood was that AA could return to Mogadishu with being at risk of persecution from Al Shabaab and the situation there was not such as to render such relocation there unduly harsh on a personal basis. There is no material error of law in the finding by First-tier Tribunal Judge Walker that there had been "nothing raised today to show any fresh evidence that would affect" the findings by First-tier Tribunal Judge Maciel. As to this see also Ground 2 below.

Ground 2

11. Ms Walker submits that although evidence was placed before First-tier Tribunal Judge Walker on the changed situation in Mogadishu, the Judge failed to

engage with that evidence as shown by his failure to consider the expert documents relied upon and mistakenly referring to AA's proposed country of return as Iran/Iraq. Whilst it is regrettable that the Judge does not appear to have carefully proof read his decision prior to promulgation and the paragraph regarding humanitarian protection appears, as a result, to be a cut and paste paragraph, it is incumbent upon AA to show that the combination of these two matters amounts to a material error of law.

12. The three documents relied upon by Ms Walker which were before First-tier Tribunal Judge Walker and not referred to by him were a UNSOM report titled Protection of Civilians: Building the Foundation for Peace, security and human Rights in Somalia – December 2017, US Counterterrorism Objectives in Somalia: Is mission failure likely dated March 2017 and a UNHCR report dated November 2017. *MOJ* makes clear that it is not simply those who originate from Mogadishu who can live there without being at Article 15(c) risk. Ms Walker relied upon references in the UNSOM report including:

A.2 The security situation remained volatile during the reporting period. The main conflict was between national security forces – supported by ANISOM – and Al Shabaab, the major armed group controlling significant territory in Jubbaland, South west State and HirShabelle. Other conflicts resulting in civilian casualties included recurrent clashes between clan militia aligned to power holders, especially in areas where national and state security forces were absent.

E.56. from January 2016 to 14 October 2017, eight complex attacks attributed to Al Shabaab took place in Mogadishu (seven) and Baidoa (one) which resulted in 363 civilian casualties...

13. She relied upon the internal displacement figures in the US Counterterrorism document showing increased drought related displacement figures and conflict related displacement. Figures for Mogadishu were not provided and there was no indication from these documents that individuals were leaving Mogadishu or there had been a significant reduction in people arriving or a significant reduction in economic activity.
14. *MOJ* refers to the significant level of inward investment and the economic opportunities that stem from that investment in areas such as construction and leisure. Ms Walker did not direct me to any evidence that had been before the First-tier Tribunal Judge that could have led to a departure from the country guidance. Although there have been terrible incidents of violence and civilian casualties, the point is made in *MOJ* that the areas that such atrocities happen is delineated. There has been a relatively recent outrage that Al Shabaab have not claimed responsibility for but one incident of that nature is insufficient to enable a departure from Country Guidance in the absence of anything more.
15. Here is a dearth of evidence relied upon to show that the situation in Mogadishu has destabilised, that there are no longer adequate economic opportunities or that the violence has become prevalent such that any individual going there would be at risk. The evidence I was directed to, which was presumably the same evidence as First-tier Tribunal Judge Walker was directed to, simply does not support a claim that AA would be at serious or significant disadvantage or is

in need of Article 15(c) protection. There is no justification from departing from the guidance in *MOJ*.

16. Although the First-tier Tribunal Judge failed to refer to the background material to which he was directed, the error is not material.

Ground 1 and 2

17. Although there is some overlap between the two grounds relied upon; the claimed inability to access economic opportunity and the increase in violence having an effect on that, the evidence relied upon by AA was inadequate to justify either a departure from the Country Guidance or from the findings of First-tier Tribunal Judge Walker.
18. It follows that although the First-tier Tribunal Judge could perhaps have provided more detail, the outcome would have been the same and could not have been any different.
19. There are no material errors of law in the decision by First-tier Tribunal Judge Walker.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal dismissing the appeal on protection grounds stands.



Date 9th April 2018

Upper Tribunal Judge Coker