



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

Appeal Number: RP/00004/2017

THE IMMIGRATION ACTS

**Heard at Birmingham
on 1 May 2018**

**Decision promulgated
on 4 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RCD

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gardner instructed by Hesi & Co Solicitors

For the Respondent: Mr Mills – Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Gribble, promulgated on 23 October 2017, in which the Judge allowed the appellant's appeal on human rights grounds.

Background

2. The appellant was born on [] 1989 and is a citizen of Somalia. He arrived in the United Kingdom with his twin brother and younger sister on 16 July 2003 aged 13 and claimed asylum. The appellant was initially granted a period of discretionary leave although succeeded on appeal before the First-tier Tribunal against the refusal of refugee status as a result of which, on 6 July 2004, the appellant was granted refugee status and indefinite leave to remain in the United Kingdom.
3. The Judge sets out the appellant's background and evidence provided by both parties to the appeal before setting out findings of fact from [37] of the decision under challenge.
4. The Judge correctly identified the first issue to be considered was the section 72 certificate in light of the appellant's offending which triggered the automatic deportation provisions. At [42] the Judge writes "taking these factors into account I find that the section 72 presumption is successfully rebutted". The Judge did not find that the appellant constituted an ongoing danger to the community of the United Kingdom.
5. The Judge makes further relevant findings as follows:
 - (i) at [44] that he was satisfied the appellant could not return to his home area because he would be at risk of persecution for his imputed religious opinion.
 - (ii) at [45] the Judge therefore needed to consider whether the appellant could relocate to avoid persecution and, if he could, whether relocation in his circumstances would be unduly harsh.
 - (iii) at [49] it is found the appellant is likely to find himself living in makeshift accommodation as an internally displaced person and is therefore a person entitled to protection under Article 3 ECHR because he would face inhumane or degrading treatment on return to Mogadishu.
 - (iv) in the section of the decision headed "notice of decision" the Judge allows the appeal under article 3 and article 8 ECHR only.
6. The appellant sought permission to appeal asserting the Judge failed to determine two the grounds of appeal, namely that the section 72 certificate was unlawful and that the appellant is a refugee.

Error of law

7. There is no cross-appeal by the Secretary of State meaning the fact the appellant has been recognised as a person entitled to rely upon an exception to the deportation provisions remains unchallenged, as do

the factual findings made by the Judge. This is therefore a 'status appeal' for the purposes of ascertaining whether the appellant is entitled to be recognised as a refugee and to leave on that basis rather than under article 3 ECHR.

8. I find the Judge erred in failing to determine a matter which was before the First-tier Tribunal namely whether the appellant is entitled to refugee status, contrary to section 86(2)(a) Nationality, Immigration and Asylum Act 2002.
9. The Judge deals with the section 72 certificate and found that the presumption was rebutted.
10. I set the decision aside as the obligation upon the Judge was to deal with all matters before the tribunal. The findings set out in the determination are all preserved. The Upper Tribunal is able to remake the decision today.
11. Mr Mills accepted that the Judge appears to have considered the question of whether the appellant is entitled to be recognised as a refugee in relation to his home area only and then to have gone on to consider whether the appellant could relocate to Mogadishu, which the Judge finds would be unreasonable or unduly harsh, without considering the correlation between these two findings.
12. The appellant's home area is outside Mogadishu. It is accepted by the Judge that the appellant faces a real risk of persecution in his home area as a result of an imputed religious opinion [44]. The appellant is entitled to be recognised as a refugee in the absence of a sufficiency protection or viable internal flight option.
13. The issue in this case related to whether the appellant could reasonably internally relocate to Mogadishu. It was found he could not meaning he has no viable internal flight option away from his home area.
14. On this basis the appellant makes out his case that he is entitled to be recognised as a refugee.
15. The Upper Tribunal substitutes a decision allowing the appeal on asylum grounds.
16. Mr Mills confirmed that a letter had been sent to the appellant following the decision of the Judge confirming he will not be removed from the United Kingdom and that his indefinite leave to remain will be reinstated. This was not acceptance of the merits of the appeal as the respondent awaits the decision of this tribunal to ascertain the nature of the appellant's entitlement. This decision now provides confirmation of the same.

Decision

17. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed on asylum grounds.**

Anonymity.

18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 1 May 2018