



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

Appeal Number: RP/00070/2017

THE IMMIGRATION ACTS

**Heard at Piccadilly Exchange, Manchester
On 11th January 2018**

**Decision & Reasons Promulgated
On 17th January 2018**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ABDIFATAH ABDIFATAH AHMED MOHAMED

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer
For the Respondent: Appeared in person, no legal representation

DECISION AND REASONS

1. Mr Mohamed, date of birth 1 January 1993 and a Somali national, arrived in the UK on 13th October 2008, aged 15, on a family reunion visa after his mother had been recognised as a refugee. His family originated from Awdhegele, Lower Shabelle and he had lived in Mogadishu. His mother had been recognised as a refugee as a member of the Rahanweyn clan, sub clan Digil, sub sub clan Begeedi and that she and her family had suffered persecution at the hands of the Habar Gidir and other militias. He was recognised as a refugee. He was granted indefinite leave to remain on 11 April 2012. On 20 May 2016, he was convicted of possession of a controlled drug (Class B) with intent to supply and sentenced to 15 months' imprisonment. At the date of his conviction he was serving a

community order for two earlier convictions for harassment and battery dated 27th March 2015 and 29th May 2015. Those convictions related to a former partner.

2. The SSHD notified Mr Mohamed of her intention to cease his refugee status and sign a deportation order. Representations were sent to the SSHD from Mr Mohamed's earlier legal representatives and the UNHCR wrote to the SSHD with comments on the proposed ceasing of refugee status. On 17th May 2017 the SSHD made a deportation order, revoked his refugee status and refused his protection and human rights claim.
3. Mr Mohamed's appeal was heard by the First-tier Tribunal on 31st August 2017 and, for reasons set out in a decision promulgated on 26th September 2017, First-tier Tribunal judge Knowles allowed his appeal.
4. The SSHD sought, and was granted, permission to appeal the decision on the grounds that it was arguable the First-tier Tribunal judge had erred in law in allowing the appeal on Article 3 grounds. The SSHD submitted that the First-tier Tribunal findings were not in accordance with the country guidance case of *MOJ (Somalia) CG [2014] UKUT 00442 (IAC)*; that there was treatment available for type 1 diabetes in Mogadishu; that the judge had failed to factor into his assessment the family assistance available; had failed to provide reasons why Mr Mohamed could not benefit from the economic boom; had failed to provide reasons why Mr Mohamed would require the assistance of an IDP camp. Permission was also granted on the grounds that it was arguable the First-tier Tribunal judge had erred in failing to consider the great public interest in deporting a foreign criminal.

Error of law

5. At its core the First-tier Tribunal judge allowed Mr Mohamed's appeal on the grounds that he would be at risk of inhuman and degrading treatment in breach of Article 3, that his deportation pursuant to the deportation order would be a disproportionate interference in his private and family life (Article 8).
6. The First-tier Tribunal judge made the following undisputed findings:
 - (i) Mr Mohamed is a minority clan member – the Begedi;
 - (ii) Mr Mohamed is not at real risk of being persecuted for a Convention reason and nor is he entitled to humanitarian protection;
 - (iii) Mr Mohamed's appeal against the revocation of his refugee status fails;
 - (iv) Mr Mohamed does not meet the high threshold for protection under Article 3 on health grounds;
 - (v) Mr Mohamed has not, on health grounds, shown a "degree of harm amounting to a sufficiently adverse effect on physical and moral integrity to engage Article 8";

- (vi) He has no nuclear family or close relatives living in Mogadishu; he has no family associations he can call upon in Mogadishu;
- (vii) The circumstances of Mr Mohamed in Mogadishu before he joined his mother were grave;
- (viii) Mr Mohamed left Somalia aged 15. Although he spent his formative years there he has not lived there alone without family support;
- (ix) It is reasonably likely that any clan affiliation he has, being a minority clan, will have little support to offer him;
- (x) His mother and brother in the UK could provide some financial support to him in Somalia, albeit limited;
- (xi) He has had the benefit of a UK further education and language skills which will benefit him on his return to Somalia;
- (xii) He would need to privately fund his type 1 diabetes, including a fridge to cold-store his insulin

7. The SSHD disputed the judge's findings (or lack of findings)

- (i) That Mr Mohammed will face a real risk that he will have to draw on the assistance of an IDP camp;
- (ii) That there is a real risk that Mr Mohammed will not be able to secure his medical needs and avoid living in circumstances which fall below the threshold of his protected Article 3 rights;
- (iii) that Mr Mohamed would not be able to avail himself of employment;
- (iv) that he could not participate in the economic boom, as required by *MOJ*;
- (v) The lack of funds available.

8. The judge has failed to address and make a finding whether there is evidence that Mr Mohamed could or could not participate in the acknowledged economic boom in Mogadishu.

9. The judge concluded Mr Mohamed would have to call on the assistance of an IDP camp despite there being financial assistance available to him from his family in the UK and despite his acquired skills. There is no reasoning provided for that conclusion.

10. The judge has erred in his conclusion that the circumstances in which he would live would fall below the Article 3 threshold. As made clear in *SSHD v Said* [2016] EWCA Civ 442 at [31] ".....An appeal to article 3 which suggests that the person concerned would face impoverished conditions of living on removal to

Somalia should, as the Strasbourg Court indicated in *Sufi and Elmi* at para 292, be viewed by reference to the test in the *N* case....". Although accepted by the SSHD (inevitably given *MOJ*) that living in an IDP camp would amount to a breach of Article 3, specific consideration should be given to *Said* in the absence of a real risk of being in such a camp. The judge's finding that Mr Mohamed would have to "draw on the assistance of an IDP camp" is not a finding that there is a real risk he will be in such a camp. Even if the judge's finding could be read to be such a conclusion, that conclusion was reached without consideration of the employment conditions in Mogadishu and the financial support available.

11. The First-tier Tribunal judge erred in law such that I set aside the decision to be remade, the findings at [6] above being retained.

Remaking the decision

12. Mr Mohamed gave oral evidence before me. Although there was an interpreter present, it was very clear that Mr Mohamed speaks excellent English and is to be commended for this. He did not have to resort to the interpreter for assistance. He explained very fluently his current circumstances. He has, he said, completely distanced himself from the previous people who had such a bad influence on him. He lives at home with his mother with whom he is very close and he doesn't go out other than for normal day-to-day activities. He says he has learnt a very serious lesson whilst detained and he says that there are no circumstances in which he would behave in such a way as to result in him being imprisoned again. He said he would not commit any further crimes. He told me that he had been for a job interview and was due to start a new job in the coming week.
13. It was clear that he still has terrible memories of what he saw and what happened when he was in Mogadishu as a teenager. Although he did not refer directly to the basis upon which his mother was recognised as a refugee, the documents before me refer to her having been raped in front of him. I have no doubt at all that these traumatic events have had a long lasting effect upon him and, as found by the First-tier Tribunal judge, that he has a close relationship with his mother. The index offence was committed when he was living away from home, the first time that he had been away from home and attempted to live independently.
14. He has Type 1 diabetes and, according to the documents before me, he was very ill when he first arrived in the UK. After skilled treatment and the introduction of insulin by way of injection, his health stabilised and is now under control. He explained how he has to carry medication with him and identify when he needs to self-medicate. I do not doubt that he is dependent on injectable insulin and that he needs to be able to look after his medication properly.
15. The country guidance case of *MOJ* makes clear that it is for the person facing return to explain why he would not be able to access the economic opportunities in Mogadishu. The evidence before me is evidence of Mr Mohamed's uncertainty and anxiety at returning to a city of which his last experience was traumatic and where he does not know any one and has no contact with anyone

from whom he can seek assistance. Since leaving Somalia, Mr Mohamed has acquired excellent language skills and, although his previous work experience is limited, he has some experience that he can utilise, as shown by the fact that he has now been offered employment in the UK having served his prison sentence. The evidence that was considered by the Tribunal in *MOJ* has not been distinguished and remains valid and applicable. Mr Mohamed will be returning with relocation finance and access to funds from his family in the UK. He will be able to utilise those funds to find adequate accommodation (and a fridge) when first arriving in Somalia and there is no indication that he will not be able to seek work. The risk of being in an IDP camp is not shown given the access to funds and potential employment. It cannot be concluded that there is no real prospect of him securing access to a livelihood on return.

16. Although he has Type 1 diabetes, the evidence before me is that medical treatment is available albeit privately funded. I have no doubt that Mr Mohamed will find relocation difficult but treatment is available, he does not meet the high threshold set by *N* and he will have access to limited financial support. He will be in no worse position than other returnees and, given the financial support from his family and the relocation finance and the potential for employment, it is not likely that he will be destitute.
17. Mr Mohamed has a close relationship with his mother and I have no doubt but that separation from her and from his siblings will be very upsetting both for them and for him. I acknowledge that he is very clear that he has “learnt his lesson” following his conviction and sentence of imprisonment. His oral evidence and his demeanour were impressive and I have sympathy for him and his family. Nevertheless the legislative framework requires deportation despite this unless he has been lawfully resident in the UK for most of his life, is socially and culturally integrated in the UK and there would be very significant obstacles to his integration in to Mogadishu.
18. Mr Mohamed came to the UK aged 15 in October 2008. He is now aged 24, having been in the UK for nearly 10 years. He has not been in the UK for most of his life although he has spent some of his adolescence here. He speaks English and has worked and is due to work. Although the committing of a serious crime (as he has) is an indication that he is not socially and culturally integrated in the UK, when set against his age when he came to the UK and his language fluency I accept that he is, just, able to show that he is socially and culturally integrated.
19. What he has not been able to show is that there will be significant, or even very significant, obstacles to his integration in Mogadishu. Although he will no doubt find it difficult, the difficulties he will face are not very significant obstacles. The public interest is very firmly that Mr Mohamed should, because of his conviction and sentence of imprisonment of 15 months, be deported. Whilst it is correct to say that he speaks English, will not be a burden on the UK taxpayer now (because of his employment), that he has been lawfully in the UK since his arrival in 2008 and that three years of that has been as a minor, the proportionality of his deportation has to be weighed in the context of his criminal conviction. Taking all of the above factors into account I am driven to the

conclusion that his deportation is not a disproportionate interference in his private and family life.

20. Whilst I have sympathy for Mr Mohamed, sympathy is not enough. I dismiss his appeal on all grounds.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing it.



Date 15th January 2018

Upper Tribunal Judge Coker