



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00039/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre
On 18 June 2019

Decision & Reasons Promulgated
On 18 September 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

ABDIKADER KADEED

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Imamovic

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

DECISION AND REASONS

1. The appellant was born on 14 November 1987 and is a male citizen of Somalia. My decision promulgated on 3 May 2019, Upper Tribunal Judge Rintoul found that the First-tier Tribunal had erred in law and set aside its decision.

2. Following the making of a transfer order, the resumed hearing took place before me at Birmingham. I heard evidence from the appellant, Mrs Bulali, the appellant's mother and his brother, Mr Kamal Kameed, who had also written a letter in support of the appellant.
3. The burden of proof is on the appellant. The standard of proof as regards both the likelihood of persecution and the establishment of past and future events is a reasonable degree of likelihood. The appellant must show that there are substantial grounds for believing that be a real risk that he will face persecution and ill-treatment on return to Somalia. In the appeal on Article 8 ECHR grounds, standard proof is the balance of probabilities.
4. I shall address the issues remaining to be determined in the appeal as indicated by Judge Rintoul.

Whether the section 72 certificate is made out?

5. Section 72(2) of the 2002 Act (as amended) provides:
 - (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is –
 - (a) convicted in the United Kingdom of an offence, and
 - (b) sentenced to a period of imprisonment of at least two years.
6. Given the severity of the appellant's criminal offending, he falls within the provisions of the section. The presumption in favour of his exclusion from refugee protection may be rebutted by evidence. The appellant has not been convicted of any offence although until 2017, following his release from imprisonment, he has been under licence restrictions. However, as Mr Mills who appeared for the Secretary of State submitted, the appellant's offending continued after 2014 by which time he had received a letter from the Home Office warning him of the possibility of deportation and the removal of his refugee status. Ms Imamovic, who appeared for the appellant, submitted that the appellant's offending had taken place when he was a young adult. She submitted that he had reformed, his second period of imprisonment having 'really changed him.'
7. The appellant's criminal offending is of an extremely serious nature involving the supply of hard drugs. I take the force of the point made by Mr Mills that, even when it became apparent that the appellant might be removed from the United Kingdom, he continued to offend. It is also difficult to be persuaded that he is behaviour has changed in recent times given that he had been released on licence; is difficult to say whether he has refrained from offending because he has forsworn criminality, as he claims, or because he had not wished to be returned to prison during the currency of his licence which ended in 2017. On balance, I find that and the fact the appellant has

failed to rebut the presumption in favour of denying him refugee protection. I do not accept the fact that the appellant 'turned himself in for a breach of his probation licence is sufficient to show that he has genuinely been rehabilitated and is no longer a danger to the community. Having considered all the evidence carefully, I find that that instance was an indication of the appellant's unwillingness to be returned to prison rather than a genuine move away from a pattern of criminal conduct.

Whether the applicant is at risk of ill-treatment of sufficient severity to constitute persecution and/or a breach of Article 3 ECHR and return to Somalia

8. The appellant's mother gave evidence regarding the whereabouts of any family members in Somalia. Mr Mills, in his submissions, agreed that there was no evidence that the appellant had family members living in Somalia. The appellant's mother said that she has nine children in all. She said that the appellant's siblings would not support him if he left to live in Somalia. In his evidence, the appellant said that, at the present time, his mother father and brother support him financially. He has little memory of living in Somalia, a country which he left when he was 14 years old. Cross-examined, the appellant said that his family had supported him in the United Kingdom by paying his legal fees. However, he denied that financial support would be available to him should he move to Somalia. He said that supporting him in Somalia would be 'a bit different... It would be hard...[the family] had only helped me in the short term.' Mr Kadeed told me that he had been appalled by the appellant's offending. He would find it difficult to give financial support to the appellant in Somalia since he was spending such funds as he had upon supporting himself and his studies in the United Kingdom. However, he did comment that another brother, who is married with two children and with whom Mr Kadeed currently lives, 'could possibly support the appellant' if he were to move abroad.
9. The evidence which the witnesses gave regarding the lack of family members or friends in Somalia is not controversial given that Mr Mills has accepted that the appellant has no family living there. To that extent, I accept the evidence of the witnesses as true and accurate. However, I found the evidence which each of the witnesses, including the appellant, gave regarding the possibility of the appellant's being funded by family members once he is in Somalia to be less impressive. I acknowledge that none of the appellant's siblings appear to have particularly well-paid jobs and I acknowledge also that they have family commitments of their own. However, they have demonstrated their willingness to support the appellant financially including by assisting with payment of his legal fees which are likely to have been substantial. I do not accept that that willingness to support the appellant will evaporate should he be deported to Somalia. I am aware also that relatively small amounts of funding may go a very long way in a country where the cost of living is substantially lower than it is in the United Kingdom. I find that, if the appellant is deported, his family will support him and that such support as he will receive will be reliable and consistent and will enable him to avoid becoming destitute.

Is the appellant likely to be exposed to Article 3 ECHR risk in Somalia as a member of a minority clan?

10. The current country guidance remains *MOJ (Return to Mogadishu) Somalia [2014] UKUT 00442 (IAC)*. I am aware that I need to consider the personal circumstances of the appellant in determining whether he would be at risk and return. Headnote (ix) of *MOJ* provides:

“(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- *circumstances in Mogadishu before departure;*
- *length of absence from Mogadishu;*
- *family or clan associations to call upon in Mogadishu;*
- *access to financial resources;*
- *prospects of securing a livelihood, whether that be employment or self-employment;*
- *availability of remittances from abroad;*
- *means of support during the time spent in the United Kingdom;*
- *why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return”*

11. As regards the appellant’s clan affiliations, both parties accept the appellant is a member of the Asraf, a minority clan. Ms Imamovic submitted that the existing country guidance of *MOJ* has been superseded by developments in Somalia. She relies upon the most recent Home Office CPINs which are dated September 2018 and January 2019. The societal discrimination falling short of ill-treatment identified in *MOJ* has, she submitted, given way to a greater threat to minority clan members from militia groups and majority clan members. She relies also upon a report of Omer Ahmed which is dated 18 April 2019. This report concludes that the appellant is at significant risk as a minority clan member both from violence at the hands of militia members but also in respect of destitution should he be compelled to live in or near an IDP camp.
12. Mr Ahmed’s report is lengthy. However, it is very short indeed upon quoted sources or specific examples of ill-treatment/ destitution faced by individuals returning to Somalia. Many of the assertions made in the report are, as Mr Mills submitted, wholly unsupported by evidence of any sort. In essence, the report simply seeks to contradict the findings of the Upper Tribunal in *MOJ* but seeks only to do so by asserting that the country guidance is wrong or out of date; no new properly sourced evidence is advanced which is capable of converting assertions into expert opinion evidence of real value. Having regard to these criticisms, the weight which I attach the report is limited. Likewise, I agree with Mr Mills’s submission that the most recent CPINs do not contradict guidance set out in *MOJ* which, in my opinion,

remains good country guidance as at the date of this hearing. I acknowledge that the appellant has not been in Somalia since he was 14 years old and that he may, at least at first, find it difficult to find work in the country. However, he has basic British educational qualifications in information technology and is fluent in English language, accomplishments which may assist him in finding employment. Most importantly, I find as a fact that the appellant will receive regular and reliable funding from his family members living in the United Kingdom. That funding, albeit perhaps modest, will in my finding enable him to avoid destitution or having to live in or near an IDP camp whilst he establishes himself and seeks work. I do not accept that his membership of the Asraf clan will *per se* expose him to risk going beyond societal discrimination. I find the appellant has failed to establish that there are substantial grounds for finding there to be a real risk of his being exposed to Article 3 ECHR ill-treatment upon return to Somalia.

13. The appellant's partner, Ayan Aden, has filed and served a statement in support of the appellant's appeal. The couple have been together since 2009 but 'many obstacles' (no doubt including the appellant's criminal offending) have prevented them from getting married. I accept the appellant is in a relationship with Ms Ayan. However, they have no children and do not cohabit. I accept the submission of Mr Mills that the severity of this appellant's criminal offending, involving as it has the supply of hard drugs, delivers such weight to the public interest concerned with his deportation that any family life connections or his private life, as represented by his relationship with Ms Ayan, are outweighed rendering his deportation proportionate in all respects.
14. In the circumstances, I find the appellant's appeal should be dismissed on all grounds.

Notice of Decision

I have remade the decision. The appellant's appeal is dismissed on all grounds.

Signed

Date 18 August 2019

Upper Tribunal Judge Lane