IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000851
First-tier Tribunal No:
RP/00038/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

OMM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Timpson
For the Respondent: Mr Diwnycz

Heard at Manchester Civil Justice Centre on 6 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of Judge Herwald (the Judge) dated 2 July 2021, in which the Judge dismissed the Appellant's appeal on asylum, humanitarian protection, and human rights grounds.

Factual Background

2. The Appellant is a Somali national. He arrived in the UK in August 2005 some years after his father was granted refugee status here and was a dependent upon his brother's asylum claim. Their claim was allowed on appeal in August 2006 and the Appellant was granted leave to remain until 2011. The Appellant applied for settlement in 2011 though there does not appear to have been any decision on this application.

3. The Appellant's criminal offending began in September 2014 with a caution for drug offences. After a number of non-custodial sentences, the Appellant received a 12 month sentence to a young offenders institution for handling stolen goods in May 2018. As a result of this conviction, the Respondent took deportation action against the Appellant. On 23 April 2020, the Respondent took a decision to revoke his refugee status and refuse his human rights claim. The Appellant appealed.

4. The appeal came before the Judge on 17 June 2021. The Judge found that the circumstances in which the Appellant had been recognised as a refugee had ceased to exist and so dismissed the appeal on asylum grounds. He found that the Appellant was not entitled to humanitarian protection and dismissed any appeal in relation to ECHR Articles 2 and 3. In relation to ECHR Article 8, the Judge found that the Appellant was not socially and culturally integrated, and that he would not face very significant obstacles to integration. The Judge found no very compelling circumstances and dismissed the appeal on human rights grounds.

5. The Appellant applied to the First-tier Tribunal for permission to appeal to the UT. The grounds raised a number of issues relating to ECHR Article 8 only. Permission was refused. The Appellant then applied to the UT. Those grounds argued as follows:

    a. The Judge failed to take account of material considerations;

    b. The Judge's reasons were insufficient;

    c. The Judge took irrelevant considerations into account.

    d. The Judge erred in considering humanitarian protection;

    e. The Judge failed to take a structured approach to ECHR Article 8;

    f. Other irregularities.

6. Judge McWilliams granted permission to appeal stating that it was arguable that the Judge did not consider risk on return in the light of the relevant background material.

7. The Respondent then submitted a Rule 24 response opposing the appeal.

The Hearing

8. Before us, Mr Timpson argued in particular that the Judge failed to properly engage with the letter from the UNHCR. Mr Diwnycz argued that the Judge had engaged with the letter and made clear findings. He opposed the appeal. We reserved our decision.

Findings

9. We deal with the grounds in the order set out above.

Failure to take material matters into account

10. The Appellant has not established any failure to take account of material considerations. The Judge first refers to the letter from the UNCHR dated 12 September 2018 at para 7 when he states he considered the letter 'in great depth'. There is further reference to this letter at paras 22(b) and 24(b). The Judge also considers this letter in some detail at para 29. The Judge acknowledged that the UNHCR refer to the situation being volatile in 2016, but refers to the country guidance case (MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) referred to in the cited materials at para 22) stating that there was no generalised risk of an ECHR Article 3 breach or Articles 15(a) or (b) of the Qualification Directive. The Judge went on to find that while the UNHCR had suggested the Appellant may not have family ties in Somalia, the Judge found that the Appellant had an enormous family in the UK who he could rely on for assistance on return if this was needed.

11. The Judge did take into account the UNHCR letter. Further, neither the grounds nor Mr Timpson set out how the UNHCR letter provided a clear basis for the Judge to depart from the findings of the applicable country guidance case at the time, MOJ. While the grounds at para 15 state that the UNHCR letter 'strongly argue' against the Judge's findings, no specific passages are identified. The Judge was entitled to apply the country guidance from the case of MOJ and did not err in doing so.

12. The grounds suggest that the Judge erred in failing to consider the most up to date CPINs dealing with Somalia. We do not accept this. The Judge considered the CPINs referred to in the decision letter and relied upon by the Respondent. Neither the Appellant nor the Respondent submitted the more recent CPINs as evidence in the appeal. Indeed para 25(b) of the decision makes clear that the Appellant did not put any country evidence before the Judge. As neither party submitted the more up to date CPINs as evidence, the Judge did not err in failing to take them into account.

13. The Judge was entitled to find that the Appellant spoke some Somali, as that language was used in his home. He was entitled to find that his family in the UK would provide him with support in Somalia.

Insufficient Reasons for material findings

14. The grounds argue that the Judge erred at para 25(a) of the decision when the Judge accepted the Respondent's assertion presumably that the Appellant's clan was not a minority clan. In that paragraph, the Judge simply sets out what the Respondent asserted. The paragraph itself contains no clear findings. Hence the grounds identify no error. In any event, the grounds fail to set out the significance of whether the Appellant's clan was a minority clan or not in view of the guidance in MOJ and the Judge's finding that his family in the UK would support him in Somalia. It is clear from the Judge's findings about the support the Appellant would receive from his family that applying the test in MOJ, he would not be at risk of serious harm even if he was a member of a minority clan.

Irrelevant matters

15. The grounds fail to identify any irrelevant matters that the Judge placed weight upon. It is not correct that the Judge failed to consider the risk that the Appellant would face on return. The Judge considered the Appellant's situation at paras 25 and 29 in particular. The grounds fail to establish the significance of whether of not the Appellant was a member of a minority clan. The grounds do not show that the Judge erred in law in describing the Appellant's family as enormous.

Humanitarian protection

16. This ground simply relies on the arguments considered and rejected above.

Article 8

17. The Judge did not fail to adopt a structured approach. The Judge followed the structure required by s117C of the Nationality Immigration and Asylum Act 2002. The Judge was also entitled to take into account matters raised at s117B of the 2002 Act and whether the Appellant is financially independent in particular. In considering whether any of the exceptions set out at s117C applied, the Judge considered the length of the Appellant's lawful residence and the extent of the Appellant's social and cultural integration. The Judge was entitled to find that the Appellant was not socially and culturally integrated in view of his lengthy criminal record. The suggestion of bias is without foundation. The grounds identify no error.

Other irregularities

18. The Judge was not required to recite the submissions in the decision. The grounds do not identify any submissions of significance which the Judge failed to consider.

Conclusion

19. Having rejected all the arguments advanced by the Appellant, we conclude that the Judge's decision does not contain any error of law and so we dismiss the appeal.

Notice of Decision

The appeal is dismissed.

Judge Sills

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 March 2023