



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002756

First-tier Tribunal No: RP/00028/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 June 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MM
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant:

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard by remote video at Field House on 1 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background and Chronology

1. For clarity, the parties are referred to as they were before the First-tier Tribunal.

2. The respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Kelly) promulgated 4.1.21 allowing, on article 3 grounds only, the appellant's appeal against the respondent's decision of 28.4.20 to refuse his human rights and international protection claims and to revoke his refugee status.
3. The appellant is a national of Somalia who joined his mother in the UK at age 17 in 2007 and was granted refugee status as a member of the Sherkel minority clan. He has been convicted of a number of criminal offences, most recently robbery, assault occasioning actual bodily harm, and false imprisonment, for which he was sentenced on 1.10.14 to a term of imprisonment of 11 years and 3 months.
4. The respondent's case at the First-tier Tribunal was that he is subject to automatic deportation and that it is now safe for the appellant to return to Somalia. His claim was certified under s72 on the basis that he has committed a serious offence and is a danger to society.
5. Judge Kelly upheld the certification, finding that the appellant was excluded from international protection, as a result of which the appeals against refusal of the claim for international protection and revocation of Protection status were dismissed. However, for the reasons set out between [28] and [36] of the decision, purportedly applying MOJ and others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), and AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC), the judge concluded that it would not be reasonable to expect the appellant to relocate to another part of Somalia following arrival in Mogadishu and that he continues to be at risk of serious harm throughout Somalia, so that removal to Somalia would breach his article 3 ECHR rights to freedom from torture or inhumane or degrading treatment.
6. In summary, the grounds argue that the First-tier Tribunal made a material misdirection in law in the application of MOJ and provided no adequate reasons why the appellant would be unable to return to Mogadishu without becoming destitute. It is also argued that the judge failed to consider the November 2020 CPIN on 'Somalia (South and Central): Security and Humanitarian Situation.' It is further argued that the judge should have been more circumspect in consideration of the expert evidence of Mr Hoehne, particularly given the criticisms of him in MOJ.
7. In granting permission to appeal to the Upper Tribunal, the First-tier Tribunal Judge considered that, *"there are inadequate reasons given with regard to the Applicant becoming destitute in Somalia bearing in mind the judge found that the Applicant is currently dependent upon his brother for food and clothing and there is no indication in the determination that the brother would not be sending any remittance to the Applicant. There was no clear finding on whether that would not be done. The judge also found that despite being outside the country for a long time and his knowledge in the Somali language deteriorating he would quickly be able to restore this, given that this was his only language for seventeen years. The respondent argues that the Applicant can therefore pick up a job. There is no reference in the determination to the latest background material and relevant section referred to by the respondent and that would have a bearing on the Article 3 findings. The judge at paragraph 36 also errs in conflating the Article 3 finding with the issues which the Judge is prevented from deciding due to the application of the certificate upheld under Section 72 of the Nationality, Immigration and Asylum Act 2002. It is therefore impossible to state*

that this did not have a bearing on the Article 3 finding of the judge which would therefore be an error of law. All grounds are arguable."

8. The appellant remains in prison and at the direction of the Upper Tribunal was not produced for the error of law hearing listed before me on 1.6.23.
9. In addition to the grounds, the Upper Tribunal has received the appellant's response to the Notice of Appeal, drafted by Mr Draycott and dated 22.3.21, together with a recently received bundle of authorities relied on by the appellant and referred to by both representatives in their respective submissions, all of which I have considered where appropriate.
10. Following the most helpful submissions by both legal representatives, I indicated that I would reserve my decision to be provided in writing, which I now do.

Findings on Error of Law

11. Ms Cunha made three primary submissions: (i) material error as to whether the appellant would become destitute so as to meet the high article 3 threshold. As part of this, it is submitted that the judge erred as to whether he would have family support on return; (ii) that the judge should have been more circumspect in accepting the expert evidence of Mr Hoehne; and (iii) that the CPIN was not taken into account.
12. Not pursued was the ground that at [36] of the decision the judge conflated issues under the Convention with the article 3 assessment. Both representatives agreed that the issue was not material to the serious harm consideration and outcome of the appeal, and I address it no further.
13. At issue in respect of the first submission is that at [32] of the decision, Judge Kelly considered the criteria set out in the Country Guidance but concluded that there was very little prospect of the appellant receiving remittances from his family in the UK. This was relevant and contributory to the finding that on return to Mogadishu he would face deprivation and the prospect of living in circumstances falling below acceptable humanitarian protection terms, breaching article 3 ECHR.
14. In relation to family support, the respondent argues that as he was evidently dependent on his brother for food and clothing there would be no reason why he could not receive remittances in support from abroad (the UK). The respondent argues that the appellant would not meet headnote (xii) of the Country Guidance. If he is in receipt of remittances from abroad, he would not face the prospect of living in circumstances falling below an acceptable standard in humanitarian protection terms. The respondent also complains that there is no reasoning provided in the decision why the appellant could not seek work in the low-skilled sector, taking advantage of his experience in the West. Lack of clan support is not a material factor that would prevent him seeking employment and benefiting from the recent economic boom. The judge also found that his language skills would be quickly restored.
15. The respondent complains that the judge does not take account of the fact that the criteria in (xii) of the headnote, with reference to the considerations in (ix) must be satisfied to justify the conclusion that he would have "*no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms,*" so as to meet the very exceptional circumstances test. Reference should be made to the Upper Tribunal's decision as the decision mis-cites the sub-paragraph numbering. The respondent points out that it was for the appellant to

show why he would not be able to access the economic opportunities then said to be available because of an economic boom.

16. In Herrera v SSHD [2018] EWCA Civ 412, the Court of Appeal said that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence.
17. Mr Draycott submitted that in essence the grounds are a reasons challenge and the Upper Tribunal must bear in mind that in Shizad (sufficiency of reasons: set aside) [2018] UKUT 00085 (IAC), it was held that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. In effect, where the material before the Tribunal justifies the conclusions reached, a reasons challenge must fail.
18. I note that at [27] of the decision the judge said, "I am bound to be selective in my references to the evidence and various expert and country information reports when giving reasons for my decision. I nevertheless wish to emphasise that I considered all matters in the round in arriving at my conclusions." There is every indication that all of the evidence was considered, and it should not be assumed that it was not simply because it is not specifically referred to.
19. In R (Iran) and others v SSHD [2005] EWCA Civ 982, Lord Justice Brook held that there was no duty on a judge in giving reasons to deal with every argument and that it was sufficient if what was said demonstrated to the parties the basis on which the judge had acted. In Budhatkoki [2014] UKUT 00041 (IAC), the Upper Tribunal held that "it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."
20. I am satisfied that considering those factors highlighted in the decision and the evidence generally, much of which was not in contention, that the judge was entitled to reach the conclusion that the appellant would not have financial support from abroad. The evidence was that whilst the brother provides food and clothing in the UK, his own financial circumstances were under strain, supporting both his parents. He stated in evidence that whilst he could make a one-off remittance to the appellant, he would not be able to provide long-term support. In addition to his minority clan status, his significant mental health issues, the absence of family connections, the conclusion that there would be no remittances from abroad, the appellant was a stranger to Mogadishu. Cogent reasons were also provided for findings at [35] that the appellant could not be expected to relocate to another part of Somalia.
21. Ms Cunha's third submission was that there was no reference in the impugned decision to the CPIN and the prevailing improved conditions in Somalia, set out between 2.4.1 and 2.4.7., including the decline in relevance of minority clan membership. The CPIN information is that since AMM the security situation has generally improved across the country so that there is no generalised risk of a breach of article 3 as a result of the conflict. Ms Cunha submitted that conditions were certainly no worsen than in MOJ and others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), and that the judge failed to explain why the

appellant wouldn't be able to reintegrate, deploy his skills, and avoid falling into destitution.

22. In relation to both conditions in Somalia/Mogadishu and the issue of relocation relied on by the judge when considering what risk the appellant faced on return, Mr Draycott pointed to sections of the CPIN, which were referred to at the First-tier Tribunal appeal hearing and the CPIN itself forwarded to the judge by email on 3.12.20, highlighting a deterioration in conditions in Mogadishu (2.4.7) since the Country Guidance, including over population, and in particular that Al Shabaab continued to control large parts of south and central Somalia, particularly rural areas, which would include the appellant's home area. This overlaps with the second of the respondent's submissions, that the judge should have treated the expert report of Mr Hoehne more cautiously. However, as Mr Draycott pointed out, the only material part of the report that was relied on was at [33], as to whether the appellant could relocate to avoid the risk of destitution. The judge not only cited the expert report but noted at [34] that it was consistent with the Country Guidance. As referred to above, it is also consistent with the CPIN, even if not specifically referenced in the decision. I am not satisfied that there was anything to challenge about that part of the report. It follows that there is no material error by failing to address the CPIN; the conclusion that the appellant could not reasonably be expected to relocate away from Mogadishu is clearly justifiable by the objective evidence. Furthermore, I cannot see that the judge was in error in relying on a part of Mr Hoehne's evidence that was consistent with both Country Guidance and the CPIN.
23. Ms Cunha made the point from Said [2016], against which the guidance in MOJ had to be reconsidered, that in general to succeed under article 3 there must be cause and effect; the harm needs to arise as direct result of governmental violent activities, and not merely because of the prevailing conditions. Where the treatment is not directly caused by the authorities, the high threshold of article 3 ECHR can only be met in extreme cases. In that regard, both representatives addressed me on Anite (material deprivation - Art 3 - AM (Zimbabwe)) [2021] UKUT 00203 (IAC), which held that Said [2016] is not to be read to exclude the possibility that Article 3 ECHR could be engaged by conditions of extreme material deprivation but where it is not intentionally caused, the threshold is the *modified N* test from AM (Zimbabwe), "The question will be whether conditions are such that there is a real risk that the individual concerned will be exposed to intense suffering or a significant reduction in life expectation." However, Anite was promulgated after the First-tier Tribunal decision in this appeal and cannot have been taken into consideration.
24. Considering the material that was before the First-tier Tribunal and the reasoning that is provided in the impugned decision, I am not satisfied that there was any material error of law by the First-tier Tribunal in consideration of the cumulative factors relating to the conditions facing the appellant on return to Mogadishu, including the judge's treatment of the appellant's mental health challenges, and including the finding that the appellant would for those mental health conditions have difficulty finding work, and which were no more than one of several factors relied on by the judge to conclude that the appellant would face the prospect of living in unacceptable circumstances of deprivation by humanitarian standards. That this would amount to extreme material deprivation is a conclusion consistent with the findings of the First-tier Tribunal.
25. In summary, I am satisfied that the conclusion that the article 3 threshold was met was one justified by cogent reasoning. It is clear that the judge did consider the criteria set out in the Country Guidance, which is cited in detail in the

decision, and the conclusion reached was within the range of findings open to the judge on the evidence available to the Tribunal.

26. It follows that for the reasons set out above, I am not satisfied that there was any material error of law in the decision of the First-tier Tribunal.

Notice of Decision

The respondent's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appellant's appeal remains allowed.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 June 2023