



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-005186

First-tier Tribunal No: PA/50588/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 June 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMS
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr. P. Lawson, Senior Home Office Presenting Officer

For the Respondent: Ms. L. Hirst, Counsel instructed by Turpin Miller LLP

Heard at Birmingham Civil Justice Centre on 25 May 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

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Broe, (the "Judge"), promulgated on 8 September 2022, in which he allowed AMS's appeal on human rights grounds. The Secretary of State had

made a deportation order against AMS, and had refused his protection and human rights claim.

2. For the purposes of this decision I refer to AMS as the Appellant, and to the Secretary of State as the Respondent, reflecting their positions before the First-tier Tribunal.
3. Permission to appeal was granted by First-tier Tribunal Judge Curtis on 25 October 2022. In summary he stated:

“It is arguable that Judge Broe has failed to give adequate reasons as to a finding of fact which was material to the outcome of the appeal. That is, the extent to which the Appellant would be able to call on family or clan support in Somalia and, therefore, the extent to which he would be able to access the medical services that his disability requires. I therefore grant the Respondent permission to appeal to the Upper Tribunal.”

The hearing

4. I heard submissions from Mr. Lawson and Ms. Hirst. I reserved my decision.

Error of law

5. I find that the Judge has made an error of law in his failure to give adequate reasons for his findings. However, I find that this error is not material.
6. At [24] the Judge states:

“I will deal firstly with the question of the Appellant’s nationality. This, like other issues, in this appeal has been made complicated by the Appellant’s willingness to lie in his past attempts to stay in this country. He now says that he is telling the truth about his history. He says that he was born to Somali parents in Kuwait and I therefore find that he is Somalian although I accept that he has never lived in that country.”

7. At [37] he states:

“The Appellant has never lived in Somalia and he has no relatives there. I find it unlikely that he would be able to draw on community support.”

8. The Judge fails to give any reasons for his findings that the Appellant has never lived in Somalia and has no relatives there. The Appellant had had a previous appeal in the First-tier Tribunal. It was the Respondent’s case that the Appellant had asserted during those proceedings that he had had lived in Somalia and had had a business there. He had asserted that he had married in Somalia. This had been set out in the Respondent’s decision. The Appellant had then changed his account and said that he had not told the truth before. At [24] the Judge simply accepts that the Appellant was not telling the truth before, and accepts the account he gives now, without giving any reasons.
9. Adverse credibility findings had been made by the First-tier Tribunal in the Appellant’s previous appeal. The Judge found that he could depart from this decision as “the Appellant has changed his account and his health has significantly deteriorated. The relevant jurisprudence has also changed”. Although he stated that one of the reasons he could depart from the previous

decision was because the Appellant had changed his account, he has given no reasons for why he prefers the Appellant's current account to his previous one.

10. I find that the Judge has failed to give adequate reasons for his findings that the Appellant had never lived in Somalia and had no relatives there. I find that this is an error of law.
11. However, I find that this error is not material. At [31] to [38] the Judge allowed the Appellant's appeal on Article 3 grounds with reference to the case of AM (Art 3; health cases) Zimbabwe [2022] UKUT 00131 (IAC). He set out the test from AM and found that the Appellant had discharged the burden of establishing that he was seriously ill, the first test. He then turned to consider the "second multi layered question".
12. At [36] and [37] he finds:

"I note that the Respondent was primarily concerned with the Appellant's need for a wheelchair. I am satisfied that the Appellant's health has deteriorated since the time of the decision. His current condition is set out above and it is against that background that I have considered whether suitable treatment might be available to him in Somalia. I have only limited evidence before me on the availability of treatment in Somalia but I have noted the extract from the COIR quoted above and in particular the K4D report which states that there are no specific healthcare or financial support systems for disabled people in Somalia, increasing their dependence on others and making independent life difficult. Traditionally relatives, mainly women, have been responsible for providing care for persons with disabilities. Local disability organisations and some other NGOs provide some rehabilitation services and assistive devices.

The Appellant has never lived in Somalia and he has no relatives there. I find it unlikely that he would be able to draw on community support. It has not been suggested that the NGOs would be able to provide the specialised daily treatment and medication he needs to survive. I therefore find that he would face a real risk of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering and to a significant reduction in life expectancy."

13. While the Judge repeats his unreasoned finding at [37] that the Appellant has never lived in Somalia and has no relatives there, he also states that there has been no suggestion that "NGOs would be able to provide the specialised daily treatment and medication he needs to survive".
14. The medical evidence has not been disputed by the Respondent at any stage of these proceedings. Since the previous decision of the First-tier Tribunal the Appellant had had his fingers and toes amputated. As submitted by Ms. Hirst, the Appellant's care needs are "extreme". He needs help with his personal care needs as well as to take his medication including insulin. He cannot wash, dress or eat without assistance. At [15] when recording the Appellant's evidence as to his care needs, the Judge states:

"He has weeping wounds on his legs and a nurse comes to change his dressings every other day. His fingers and toes have been amputated. Staff bring a wheelchair as close as possible to his bed and he has to jump into it. He cannot use his feet but uses his arms as levers. He cannot use a toilet unless it has rails."

The Judge records at [16] that he takes about 15 tablets a day.

15. Ms. Hirst submitted that a very high level of professional care and treatment as well as social support would be required for the Appellant in Somalia. She submitted that, even if the finding that there was no social support, or support from clan members or family was wrong, there was no evidence before the Judge that the Appellant's medical care and treatment needs would be met in Somalia. It would take more than support from family or clan members to remove the Article 3 risk as the Appellant would still require a diabetic nurse three times a day, and specialist wound care every other day. With reference to [39] of the previous decision, insulin was only available in hospital in Mogadishu and the Appellant required insulin three times a day.
16. Mr. Lawson submitted that the error was material as the Appellant would be able to obtain support from "potential" family members and/ or the overarching clan structure. If support was available from either of these groups, he submitted that it would not be a breach of Article 3, although he conceded that without support from either of these groups it would likely be a breach of Article 3.
17. At [37] the Judge found that the Appellant needed specialised daily treatment and medication to survive. This has not been challenged by the Respondent. As he set out at [34], the Respondent's position was that the Appellant's vulnerability was as an amputee who relied on a wheelchair for mobility, and who needed everyday care and assistance. However, the Judge found that more than his need for a wheelchair had to be considered given that his health had deteriorated. He stated that there had been no suggestion that NGOs would be able to provide the "specialised daily treatment and medication he needs to survive". His findings make clear that, even if family or clan support were available, it would not be enough.
18. I accept Ms. Hirst's submission that the Appellant would need more than clan or family support to remove the risk of a breach of Article 3, and that therefore there is no material error of law. I find that clan or family support would not be enough given that the Appellant needs insulin to be administered three times a day, and needs specialist wound care every other day. The evidence before the judge in the Appellant's previous appeal indicated that insulin was either not available in Mogadishu, or if it were available, was only available in hospital.
19. I therefore find that, while the decision involves the making of an error of law as the Judge failed to give reasons for finding that the Appellant had not lived in Somalia and did not have relatives there, this is not material. This is because the Judge found that the Appellant needed professional medical care and treatment in order to avoid facing "a real risk of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering and to a significant reduction in life expectancy". The Judge found that this would not be available, a finding which has not been challenged.

Notice of Decision

1. The decision does not involve the making of a material error of law and I do not set it aside.
2. The decision of the First-tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
30 May 2023