



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002682
First-tier Tribunal Nos:
PA/53094/2022
IA/07562/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAS
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms. A. Nolan, Senior Home Office Presenting Officer
For the Respondent: Mr. R. Toal, Counsel instructed by Wilson Solicitors LLP

Heard at Field House on 21 September 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 Sweet (the "Judge"), promulgated on 28 April 2023, in which he allowed SAS's appeal against the Secretary of State's decision to refuse his

protection claim. SAS is a national of Somalia who applied for asylum based on his membership of a particular social group, and his imputed political opinion.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to SAS as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted by First-tier Tribunal Judge Khurram in a decision dated 16 July 2023 as follows:

“The grounds assert that the Judge erred in making a material misdirection in law; and in a lack of adequate reasons.

On the face of the decision the Judge appears to have proceeded with it implicit that the appellant’s protection claim was credible, without giving explicit reasons. At paragraph 8, it is clear that credibility of claim was in dispute with reference to the threats from Al-Shabaab and fear on return. It is not clear whether this point in isolation will make a material difference considering the clear findings on familial/clan support available upon return. However, it is capable of making a material difference, and so is an arguable error.”

The hearing

4. I heard oral submissions from Ms. Nolan and Mr. Toal, following which I stated that found the decision involved the making of a material error of law.

Error of law

5. I find that the Judge has erred in his failure to make findings on the core of the Appellant’s claim. The grounds assert that the Judge allowed the appeal on the basis that the Appellant’s claim for asylum was made out. It is asserted that the Judge did not substantively consider that claim, and that it was therefore unclear on what basis the Appellant was said to meet the definition of a refugee. The Judge has not stated whether or not he accepted the account as being credible, nor did he provide “any reasons for why he is said to be at risk of persecution for a convention reason”.
6. I have carefully considered the decision. Nowhere does the Judge consider the Appellant’s account. In the Respondent’s decision from [16] to [18] she considered the Appellant’s account of being targeted by Al-Shabaab in some detail and rejected it. At [8] the Judge states that in the refusal letter “It was not accepted that he had received threats from Al-Shabaab, and feared them on return”. However, there is no consideration of the Appellant’s account, and no findings as to whether he had received such threats.
7. From [11] to [16] the Judge sets out some of the Appellant’s evidence. He states that the Appellant “provided more detailed evidence regarding his risks from Al-Shabaab, and gave further oral evidence generally today. He had been warned by Al-Shabaab not to sell his products to government members”. However, he does not make any findings as to whether or not this evidence is accepted. There is no other reference in the decision to the Appellant’s claim to fear Al-Shabaab on the basis of being targeted by them. At [13] the Judge accepts the Appellant’s evidence “that Al-Shabaab are present throughout the country, including Mogadishu”, but he has not made any findings on the risk to the Appellant from Al-Shabaab.

8. The Judge considered the cases of MOJ & Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), and OA (Somalia) CG [2022] UKUT 00033 (IAC) at [17] and [18], setting out the headnote. At [20] the Judge states:
- “There remains objective evidence that Al-Shabaab are operational in the appellant’s home area of Hirraan, including the News Agency report of 4 January 2023, and he would be at risk on return to that district. He has not lived in Mogadishu since the age of 8, he is from a minority clan, he has no family or other support in Somalia, and could not receive financial support, whether in Somalia or from the UK. There is evidence that Al-Shabaab continues to have an active disruptive presence in the city, and IDP camps can be dangerous places.”
9. He then goes on to state at [21] that he is “persuaded that the appellant’s claim for asylum should be allowed, as he is at genuine risk on return.”
10. The Judge finds that the Appellant would be at risk on return to his home area, but there are no reasons given for this as the Judge has not made any findings on the core of the Appellant’s claim. He then finds that he cannot relocate to Mogadishu. However, there are no findings as to the Appellant’s credibility, which is relevant to the issues of the support he may have on return, if he needs to internally relocate. I therefore find that the subsequent finding at [21] that the Appellant succeeds on asylum grounds is not adequately reasoned.
11. I find that the Judge has materially erred in failing to consider the core of the Appellant’s claim that he was targeted by Al-Shabaab, and in failing to make findings on this issue.
12. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade, I took into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:
- “(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
- (2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”*
13. With reference to the exceptions in 7(2)(a) and 7(2)(b), I consider that the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal, given that there has been no consideration of the core of the Appellant’s claim.

Notice of Decision

14. The decision of the First-tier Tribunal involves the making of material errors of law.
15. I set the decision aside. No findings are preserved.
16. The appeal is remitted to the First-tier Tribunal to be reheard.
17. The appeal is not to be listed before Judge Sweet.

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Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
4 October 2023