



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001667

First-tier Tribunal No: PA/50504/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

14th February 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

IS
(ANONYMITY DIRECTION MADE)

Respondent

REPRESENTATION

For the Appellant: Ms R Arif, Senior Home Office Presenting Officer

For the Respondent: Mr A Islam, counsel, instructed by Thompson & Co Solicitors

Heard at Birmingham Civil Justice Centre on 12 February 2024

ANONYMITY

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court."

DECISION AND REASONS

INTRODUCTION

1. The appellant in the appeal before me is the Secretary of State for the Home Department (“SSHHD”) and the respondent to this appeal is IS. However, for ease of reference, in the course of this decision hereafter I adopt the parties’ status as it was before the FtT. I refer to IS as the appellant, and the Secretary of State as the respondent.
2. The appellant is a national of Somalia. He arrived in the UK on 28 December 2018 at Manchester Airport using a fake passport and claimed asylum. The claim was refused by the respondent for reasons set out in a decision dated 20 March 2020. The respondent accepted the appellant is a national of Somalia and of the Shanshiyo tribe. However the respondent rejected the core of the appellant’s account of the events that he claimed had caused him to leave Somalia. The respondent rejected the appellant’s claim that his father had come to the adverse attention of Al Shabaab or that he was targeted and killed by Al Shabaab. The respondent also rejected the appellant’s claim that he had come to the adverse attention of Al Shabaab. The respondent had noted the appellant’s claim that he was born and lived in Hemar Weyne, which is located in the Banadir region of Mogadishu. The respondent referred to the relevant country guidance set out in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC), and said the appellant has not established that it would be unreasonable to expect him to return to Mogadishu. The respondent concluded that the appellant could in any event, internally relocate. The respondent considered the appellant’s Article 8 claim on the basis of his relationship with [JIS] and her child, who I refer to as [AO], but concluded the appellant has failed to establish that his removal would be in breach of Article 8 ECHR.
3. The appellant’s appeal against the respondent’s decision was allowed by First-tier Tribunal (“FtT”) Judge Juss (“the judge”) for reasons set out in a decision dated 5 August 2021.

THE GROUNDS OF APPEAL

4. The respondent claims the judge erred in allowing the asylum and human rights appeal. Two grounds are relied upon. First, having accepted the appellant’s father was killed as the appellant claims (*in around 2009*) the judge fails to give any or any adequate reasons for his conclusion that the appellant remains at risk upon return to Somalia. The respondent claims the appellant’s father was killed in an incident that took place over ten years ago, and although the appellant claims that he and his brother received a threatening phone call on his father’s phone, three days later, the appellant had no significant profile with Al Shabaab so that he would be at risk upon return now. Second, the respondent claims there was no evidence before the FtT to support the appellant’s claim that he married his partner, by proxy, in February 2011.

5. Permission to appeal was granted by FtT Judge Scott on 6 October 2021. She said:

“...Whilst the judge accepts the appellant’s account that his father was killed, he provides no reasons (other than the death of the appellant’s father 10 years earlier) as to why the appellant would be at risk on return. As to the judge’s findings that the appellant is married, the burden of proof is on the appellant. Whilst the judge accepts the appellant’s account, there is nothing in his findings to indicate that the judge appellant relied on, or the judge considered a marriage certificate issued by a competent authority, or evidence that the marriage was in accordance with the laws of the country in which it was said to take place.”

THE HEARING OF THE APPEAL BEFORE ME

6. Ms Arif adopted the respondent’s grounds of appeal.
7. In reply, Mr Isam submits the judge considered the reasons that have been provided by the respondent for refusing the appellant’s claim for international protection and the judge found, on the lower standard, that the appellant’s father had been killed. He submits the judge was required to resolve what had happened in the past, and whether the appellant would be at risk on return, and it can be inferred from the decision that the judge found that the appellant remains at risk upon return to Somalia. Mr Islam accepts there is no reference in the decision to any background material or the relevant country guidance set out in *MOJ & Others*, but he submits, that is immaterial because the outcome of the appeal would have been the same. When pressed Mr Islam accepted, quite properly, that the judge does not expressly consider whether the appellant can return to his home area now, and if not, whether he can internally relocate.
8. As far as the human rights claim is concerned, Mr Islam submits the judge found that the appellant is in a genuine relationship with his wife, and although he is not the biological father of his partner’s children, the appellant has a particularly close relationship with the youngest child. Mr Islam submits that although the judge refers to ‘exceptional circumstances,’ it is to be inferred that the judge concluded the appellant’s removal is disproportionate to the legitimate aim. When pressed, Mr Islam accepted, quite properly, that the judge does not consider whether the appellant could meet the requirements for leave to remain in the UK as a partner and that there is no reference to the judge have had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).

DECISION

9. The respondent had filed a ‘Respondent’s Review’ dated 1 March 2021 in readiness for the hearing of the appeal before the FtT. The respondent identified three particular issues to be determined by the FtT. First, whether the appellant is at risk upon return to Somalia. Second, whether

the appellant can internally relocate, and third, whether the appellant can succeed on Article 8 grounds.

10. The judge set out the background to the appellant's claim at paragraphs [2] to [6] of the decision. In particular, at [3], the judge summarised the background to the appellant's claim for international protection. The appellant and his partner gave evidence. The evidence received by the FtT is set out in paragraphs [7] to [12] of the decision. The judge's findings and conclusions are to be found in paragraphs [15] to [22] of the decision. The judge allowed the appeal, it appears, on asylum and human rights grounds.
11. It is right to record, as Mr Islam submits, that at paragraph [17] of the decision the judge found that there were no discrepancies in the appellant's account of how his father was killed. The judge accepted the appellant's account of the death of his father to the lower standard. I accept, as Mr Islam submits, that the judge went on to say that "...if that is right, then I find the appellant to be at risk on return". I accept that past events are capable of, as a starting point, being probative of future risk, but that does not mean that a judge is not required to give reasons explaining why, particularly as here, the appellant remains at risk upon return many years after those events. One only has to refer to the headnotes set out in *MOJ & Others* to see that the judge was required to consider, by reference to the background material and the country guidance, whether the appellant will be at risk upon return to Somalia:

"(ii) "Generally, a person who is "an ordinary civilian" (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.

(iii) There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM.

(iv) The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab's resort to asymmetrical warfare on carefully selected targets. The present level of

casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.

(v) It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of “collateral damage” in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.

...”

12. Mr Islam, quite properly in my judgement, acknowledges that the judge failed to have any or any proper regard to the relevant country guidance that impacts upon the assessment of the risk upon return. There is no reference to the country guidance or any other background material. As Mr Islam accepts, there is equally no consideration of whether the appellant can internally relocate. That was an issue identified by the respondent and had to be addressed. Reading the decision as a whole, it is difficult to discern the basis upon which the judge allowed the appeal on asylum grounds, and the decision to do so, must therefore be set aside.
13. At paragraphs [18] to [22] of the decision, the judge addressed the appellant’s Article 8 claim based upon his relationship with his partner and her children. The judge found the marriage is a genuine one. The judge concluded at paragraph [20] that there are “exceptional circumstances”. The judge refers to the evidence before the Tribunal but does not explain what the “exceptional circumstances” are, with reasons. The judge does not address the ‘five-stage’ approach that is relevant to an Article 8 claim. Even if one assumes the judge accepted the decision to refuse the appellant leave to remain has consequences of such gravity as to engage the operation of Article 8, he does not address the central issue in this appeal. That is, whether the decision to refuse leave to remain is proportionate to the legitimate aim. In reaching his decision the judge makes no reference to the public interest considerations that a Tribunal is required to have regard to when determining whether a decision breaches a person’s right to respect for private and family life under Article 8 as set out in s117B of the 2002 Act.
14. I am quite satisfied therefore that the judge’s decision to allow the appeal on Article 8 grounds is also vitiated by material errors of law such that the decision must be set aside.

DISPOSAL

15. Both Mr Islam and Ms Arif submit that given the nature of the errors of law identified, the appellant has been deprived of the opportunity of having his appeal properly considered by the FtT. They agree that the decision must be set aside with no findings preserved.
16. I have had regard to section 7.2 of the Senior President’s Practice Statement. Sub-paragraph (a) deals with where the effect of the error has

been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. I accept the appropriate course here is the one I am urged to adopt by the representatives and in fairness to the appellant, the appeal is remitted for rehearing before the First-tier Tribunal afresh with no findings preserved.

NOTICE OF DECISION

18. The decision of First-tier Tribunal Judge Juss dated 5 August 2021 is set aside.
19. The appeal is remitted to the FtT for hearing afresh with no findings preserved.
20. The parties will be advised of a further hearing date by the FtT in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 February 2024