IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006456

First-tier Tribunal No: PA/00269/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28th February 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE CAMPBELL

Between

A A A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Nathan, instructed by Duncan Lewis Solicitors
For the Respondent: Ms A. Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 08 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity because the case involves protection issues. 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. For convenience we will refer to the parties as they were in the First-tier Tribunal, so that they are appellant and respondent respectively. The appellant's appeal against a decision to revoke his refugee status and refuse his protection and human rights claims, made on 21st March 2022, was allowed by First-tier Tribunal Judge Haria ("the judge") in a decision promulgated on 14th December 2022.

2. The respondent applied for permission to appeal, which was granted by a First-tier Tribunal Judge on 16th January 2023. He found that it was arguable that the judge had failed to adequately explain why the appellant succeeded on Refugee Convention grounds, rather than on humanitarian grounds or under Article 3 of the Human Rights Convention. In the grant of permission, he referred to difficulties the appellant might face in Mogadishu, given the respondent's finding that grounds for cessation of protection status were made out and the apparent absence of a Refugee Convention reason for any difficulties he might face on return there.

3. In the course of case management following the grant of permission to appeal, directions were made in the Upper Tribunal on 15th August 2023, requiring the respondent to file and serve a position statement and giving permission to the appellant to amend the rule 24 response provided on 24th April 2023. A position statement duly followed on 14th August 2023; there was no amendment to the rule 24 response. Those two helpful documents set out the broad parameters of the cases put by the parties before us. They were supplemented by oral submissions from Ms Ahmed and Mr Nathan.

4. In summary, the respondent maintained all but one of the grounds set out in the application for permission to appeal. The judge's finding that the appellant had rebutted the presumption that he is a danger to the community was criticized as being inadequately reasoned in the light of a moderate risk identified in a consultant psychiatrist's report prepared on behalf of the appellant. So far as the second ground is concerned, in which the respondent contended that the judge had erred in finding that the appellant remained a refugee, it was conceded in the position statement that the judge's findings at paragraphs 116 and 117 of her decision were not fully taken into account in the application. In those paragraphs, the judge referred to the respondent's own guidance (the CPIN issued in January 2019) that minority clan members from the south of Somalia without clan or other patronage would be likely to be accepted as refugees. The ground was no longer pursued.

5. So far as the appellant's rule 24 response was concerned, the respondent noted the submissions regarding the apparent mistake by the author of the grounds of application that the appellant originated from Mogadishu, rather than Kismayo, but reliance was placed on paragraph 124 of **MOJ and Others [2014] UKUT 00442**, in which guidance was given that those who have moved to Mogadishu but do not originate from the city might nonetheless live there without risk so long as a form of social support or funds were available to secure accommodation and other necessities.

6. The rule 24 response set out the acceptance in an earlier appeal that the appellant and his family originated in Kismayo and are members of the Ashraf minority clan. It was contended that the judge's findings regarding danger to the community and the viability of internal relocation were open to her, and that

cogent reasons were given for her findings that the appellant is socially integrated in the United Kingdom.

7. Ms Ahmed said that the challenge to the judge's finding on danger to the community was maintained, on the basis that inadequate reasons were given. So too was the challenge to the judge's conclusion on internal relocation, as the judge had not followed country guidance or had impermissibly departed from it. The fourth ground of application concerned the judge's findings on the extent of the appellant's integration into the United Kingdom, which appeared at paragraphs 151 to 155 of the decision and included the judge's application of **CI (Nigeria) [2016] EWCA Civ 813**. Paragraph 151 concluded with a series of five full stops (or "dots"), which suggested that the judge's analysis had not been completed. That paragraph was also preceded by words in italics, which might be read to suggest that what followed was a discrete part of the decision, concerned with social and cultural integration, with the following paragraphs dealing with that issue rather than another.

8. The fifth ground took issue with the judge's approach to obstacles to integration on return to Somalia, for the purposes of Article 8 of the Human Rights Convention. The first part of that ground fell away, as ground 2 was not pursued, but the remainder was still relied upon and there was a certain correlation with the challenge to the judge's analysis of internal relocation.

9. Mr Nathan responded on behalf of the appellant. The judge had given a cogent explanation for her conclusion that the appellant was not excluded from the Refugee Convention and the finding at the end of paragraph 105 of the decision had to be read with the detailed reasoning at paragraphs 84 to 104. She had taken into account adverse and positive factors and carefully took into account the psychiatrist's finding that there was a moderate risk of violence (at paragraph 101 of the decision). Ground 3, regarding internal relocation, was unsustainable as it showed that the respondent had not properly taken into account the relevant context. The appellant was a member of the Ashraf and not from Mogadishu. The Secretary of State accepted that he was at risk in Kismayo. He fell within the country guidance in MOJ, as refined slightly by OA, as he had no links to Mogadishu and no access to funds or support there. Mention of "clan connections" in the respondent's grounds of application (at paragraphs 9, 10 and 11) showed a misunderstanding of the appellant's circumstances. Ground 2 having fallen away, if the appellant succeeded in relation to ground 3, the Article 8 challenges were plainly not material, even if the tribunal were to find that the judge erred in that context.

10. So far as the fourth ground was concerned, the analysis should be read overall, without undue emphasis on the words in italics above paragraph 151 as a title or sub-heading. It was possible that the row of dots at the end of that paragraph might suggest that the judge had forgotten to include something in her analysis. Finally, in relation to ground 5, sub-paragraph (a) was no longer pursued and the remaining sub-paragraphs would not survive if the appellant made out his case that ground 3 was unsustainable.

11. Ms Ahmed responded briefly. The judge had not properly taken into account the adverse factors that were present, when she assessed whether the appellant had rebutted the presumption that he was a danger to the community. We heard briefly from her and from Mr Nathan with regard to the appropriate venue for the decision to be remade, if we were to find that the judge materially erred in law.

Decision and reasons

12. It is convenient and appropriate for us to take the grounds of challenge in the following order: grounds 2 and 3; ground 1 and, finally, grounds 4 and 5. To a substantial extent, this reflects the judge's engagement with the core features of the appellant's case and the way in which she set out her conclusions.

13. The judge found, at paragraph 139 of her decision, that the appellant remains a refugee and that his appeal fell to be allowed on that basis.

14. Ground 2 was not pursued. The respondent's guidance, contained in a CPIN issued in 2019 at 2.4.16, is that in general, members of minority groups from the south, including Kismayo, will be at risk of a breach of their Article 3 rights and will be refugees in the absence of clan or personal patronage and the means to access an area of safety without a real risk. The appellant falls within scope of this guidance, following findings of fact made in an earlier appeal, which led to the grant of refugee status in 2005. Ground 2 appears to have been drafted without regard to the guidance, whereas the judge took it into account expressly at paragraphs 116 and 117 of her decision and made a finding that an Article 3 risk would be present on return. The focus of ground 3 was on the viability of internal relocation, to Mogadishu. Mention is made in the ground of the appellant's "clan connections", including the following at paragraph 10: " … the FTTJ failed to consider that – per [356(d)] of **OA (Somalia)** – (the appellant) would be able to make contact with his clan within a reasonable time of arrival in Mogadishu."

15. The reasoning and guidance in **OA(Somalia)** is a refinement of the guidance in **MOJ and Others**, but the appellant, as a member of the Ashraf minority clan and a person who comes from Kismayo, continues to fall within scope of the guidance in MOJ and Others and within the respondent's CPIN. Insofar as ground 3 is premised on relocation to Mogadishu with access there to clan patronage or other material support, it is misconceived. Ground 3 is not made out.

16. Did the appellant have access to Refugee Convention grounds, in the light of section 72 of the 2002 Act? The judge found that he did, as he had rebutted the presumption that he was a danger to the community. The challenge in ground 1 is that the judge's conclusion at paragraph 105 is not preceded by adequate reasoning. We find that this ground is also not made out. Paragraphs 84 to 104 of the decision contain a thorough analysis, in which factors weighing against and in favour of the appellant appear. The adverse factors included the appellant's history of alcohol abuse, use of illegal drugs and limited insight into his violent behaviour and mental health. The judge found that he showed limited remorse at the hearing. The positive factors included the breaking of all ties with his previous associates, his keen pursuit of employment and his focus on caring for his mother, who is severely unwell. The judge took into account and gave weight to a report from a consultant psychiatrist. Her overall conclusion was, we find, open to her.

17. Taking ground 2, ground 3 and ground 1 in combination, we conclude that the judge was entitled to find that the appellant remains a refugee.

18. We can comment on grounds 4 and 5 briefly, as even if they are made out, any error of law would not be material in the light of our conclusion above.

19. The decision contains unfortunate uncertainty in paragraph 151, where the judge considers whether the appellant is socially and culturally integrated in the United Kingdom in order to assess whether he falls within section 117C (4) of the 2002 Act ("Exception 1"). The paragraph is short and ends with a series of five full stops. This suggests that the judge intended to add more material. The paragraph is preceded by these words in italics: "C is socially and culturally integrated in the United Kingdom" (section 117C(4)(b)) and immediately followed, also in italics, by "There would be very significant obstacles to C's integration into the country to which C is proposed to be deported" (section 117C(4)(c)). Whether or not the italics are intended to act as sub-headings, it is readily apparent that no reasons appear in relation to social and cultural integration in the United Kingdom, favourable to the appellant or not, in marked contrast to paragraphs 152 to 155, which contain reasons bearing directly on obstacles to integration into Somalia, following deportation. It is not possible to see how the judge reached the conclusion she did regarding integration here.

20. We find, therefore, that ground 4 is made out. The judge's conclusion that the appellant is socially and culturally integrated in the United Kingdom was insufficiently reasoned. Ground 5 is, however, not made out in the light of the reasons which do appear, as noted above, and in view of our finding that the judge did not err in concluding that the appellant remains a refugee.

21. For the reasons given above, we conclude that the First-tier Tribunal decision does not disclose any material errors of law and shall stand.

Notice of Decision

The First-tier Tribunal decision did not involve the making of an error of law and shall stand.

RC Campbell
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

28th February 2024