IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002584

First-tier Tribunal No: PA/00402/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of June 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SJA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance.
For the Respondent: Ms Rushforth, a Senior Home Office Presenting Officer.

Heard at Cardiff Civil Justice Centre on 12 June 2024

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. The Appellant appeals with permission a decision of First-tier Tribunal Judge Rhys-Davies ('the Judge'), promulgated on 2 March 2023, in which the Judge dismissed the appeal against the refusal of further submissions made in support of the Appellants claim for international protection and/or leave to remain in the

United Kingdom on any other ground. The date of the refusal under challenge is 20 January 2020.

2. The Appellant was represented before the Judge. An application to adjourn this hearing, on the basis he was now without representation and wished to find as a publicly funded solicitor to represent him, was refused on 3 June 2024. The Appellant failed to appear before the Tribunal today. I am satisfied the Appellant has been served with a notice specifying the date, time, and venue of the hearing. There is no explanation for his failure to attend nor renewed adjournment application which has been granted. The interests of justice and fairness do not require the hearing to be put off as there is no explanation for the failure to attend, the issues are clear and not ones that need legal representation, many appear before the Tribunals without representation, and it was not made out the Appellant would not receive a fair hearing.
3. The Appellant is a Somali national who the Judge records was 36 years of age at the date of the hearing before the First-tier Tribunal. He claimed to have left Somalia by air on 15 September 2016 and to have arrived in the UK on 20 September 2016, when he claimed asylum.
4. His initial asylum claim was refused on 13 November 2017 against which the Appellant appealed. The appeal was heard by First-tier Tribunal Judge Fowell who, in a decision promulgated on 25 May 2018, dismissed the appeal.
5. The Secretary of State did not remove the Appellant and nor did he leave voluntarily, leading to further submissions being made by the solicitors who represented him at the time, on 3 July 2019.
6. Having considered the documentary and oral evidence the Judge sets out findings of fact from [57] of the decision under challenge.
7. The Judge, in accordance with the Devaseelan principle, took the determination of Judge Fowell as the starting point. Judge Fowell's findings, in summary, are that the Ajuran are a sub- clan of the Hawiye, it was accepted the Appellant had been subjected to a period of forced labour and torture from which he had escaped, but Judge Fowell rejected the claim of further ill-treatment thereafter. It was found the Appellant had married a majority clan member, that he could look to her family if he could not look to his own, and he could return safely to Mogadishu in light of the country guidance to be found in MOJ & Ors (Return to Mogadishu) (CG) [2014] UKUT 442.
8. At [62] the Judge notes the status of the Ajuran was a key issue, this being the clan the Appellant stated he is a member of.
9. The Appellant had relied upon the evidence of a Mr Ingiriis who the Judge found to be an unimpressive witness for the reasons set out at [63 – 67] of the determination under challenge. In light of the concerns recorded, the Judge found no material weight could be attached to Mr Ingiriis' evidence. That is a sustainable finding.
10. The Appellant also relied upon the evidence of a witness Mrs SG on the status of the Ajuran, but the Judge found little weight could be attached to the same as she was not an expert witness, and the basis of her knowledge recorded by the Judge stems from her being the daughter of KG, a leading member of the Arujan. Having assesses the evidence the Judge concluded that she had not shown any real understanding of the issues [69]. That is a sustainable finding.
11. The Judge notes at [70] that documentary evidence had been provided to support his claims the Ajuran are a minority clan and to attack the basis of the contrary conclusion reached by Judge Fowell, which relied on evidence from the Secretary of State and an expert report by Dr Bekalo who had been commissioned by the Appellant's previous solicitors.
12. Having assessed the material the Judge concluded at [75] that there was nothing in the evidence being relied upon to justify a different conclusion from

that reached by Judge Fowell, which was adopted. The Judge specifically found the Appellant is not at risk of persecution if returned to Mogadishu, or serious harm so as to engage Article 3, or otherwise at risk so as to need humanitarian protection. That is a sustainable finding.

13. At [75] the Judge dealt with an alternative argument that had not been considered by Judge Fowell, that the Appellant will face a risk of harm as a result of his poor mental health on the same basis the appeal was allowed in DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223. The Judge rejected that argument on the basis Appellant was not unwell in the same way the appellant in DH was, did not manifest the same behaviours, did not lack capacity, has a support network available to him in Somalia, and had not established that he would stand out in the same manner envisaged in DH, such that he would face a real risk of harm from others. That is a sustainable finding.

14. At [78] the Judge considers the Appellant's claims that his mental health issue is such that there will be a breach of Articles 2 and/or 3 ECHR on return. The Judge refers to relevant case law before concluding the Appellant had not proved that he will be exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering, or to a significant reduction in life expectancy, as a result of which it was found his appeal failed on those grounds too. That is a sustainable finding.

15. In relation to Article 8 ECHR, the Judge did not accept the Appellant had proved he will face very significant obstacles to his integration if returned to Somalia. He left as an adult and has not been away so long he will not know how life is lived there, he has a support network to return to, and can look to them to assist his access to treatment [81]. Having weighed up the competing interests the Judge finds that any interference with the Appellant's private life in the UK is proportionate [82 – 83]. That is a sustainable finding.

16. The Appellant sought permission to appeal on four Grounds. Permission to appeal was refused by another judge of the First-tier Tribunal and renewed to the Upper Tribunal.

17. Permission to appeal was granted by Upper Tribunal Judge Kamara on 17 August 2023 the operative part of the grant being in the following terms:

> 2. It is arguable that the judge failed to conduct a fact-specific consideration of the appellant's mental health as part of his claim to be a member of a particular social group and there was a failure to adequately consider the background evidence.
>
> 3. Permission is not refused on any ground.

18. The application is opposed by the Secretary of State in a Rule 24 response dated 13 September 2023, the material part of which reads:

> 2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal ('FTTJ') directed themselves appropriately.
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> Ground 1 – failing to make a finding on material matter
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> 3. The grounds assert that the FTTJ failed to make a finding on whether it was plausible that the appellant's cousins-in-law considered the Ajuran to be a minority clan.
> 4. However, the FTTJ first considered the previous findings under Devaseelan where the starting point was that the Ajuran are a sub-clan of the Hawiye clan, so the appellant is not at risk on account of minority clan status [40].
> 5. The FTTJ then went on to fully consider the clan status of Ajuran as a key issue [62], having considered the expert report of Mr Ingiriis and not attaching any weight due to his unsatisfactory oral evidence and not engaging with the materials provided

[68], [63] – [67]. The remaining evidence from Mrs SG [69] and letters/report from the Ajuran community and others was given little weight before the FTTJ concluded that the appellant had not proved that the Ajuran are a minority clan [73].

6. Therefore the FTTJ had settled the issue of whether the Ajuran were considered a minority clan irrespective of explicitly mentioning the appellant's cousins-in-law.

Ground 2 – failure to consider evidence and failure to make finding on material matter

7. The grounds assert that the FTTJ erred at [74] in finding that the 'death list' is of no material weight to the appellant's claim, nor that the provenance was properly considered and whether it places the appellant at risk from Al-Shabaab.
8. However, the FTTJ did not accept the documents as reliable in establishing risk following a 'death list' as there was nothing from the background evidence to indicate reliability, including the expert report [74]. Having rejected the existence of the 'death list' or risk flowing from it with Al-Shabaab, the FTTJ correctly addressed this aspect of the appellant's claim.

Ground 3 – failure to consider background evidence and membership of PSG

9. The grounds assert that the FTTJ failed to consider the persecution/Article 3 risk to the appellant from his mental health issues given the CPIN background evidence of 'chaining'.
10. The section referred to from the CPIN 2020 concerns 'chaining' from a 'lack of appropriate government supported community based services'. As the FTTJ found, the care plan for the appellant at the date of hearing included reference to medication only, and not a community-based intervention [78]. The FTTJ did not go as far as to say that the first limb of AM Zimbabwe was met for the appellant to prove he was a 'seriously ill person'. The alternative was considered by the availability and accessibility of medication, which was accepted by the representatives [78], [79].
11. Therefore, the FTTJ had properly considered whether the appellant's mental health issues created a risk of persecution as a member of a PSG [76], as well as risk under the Article 3 ECHR threshold [78] – [79].

Ground 4 – failure to consider background evidence

12. For the same reasons, it is submitted that this is not a material error of law. The appellant's mental health conditions at the date of hearing related to medication availability and accessibility, which the FTTJ dealt with in the decision [78] – [79]. The grounds cite treatment facilities relating to hospitals which did not apply to the appellant's current treatment needs.
13. It is submitted that the grounds do not establish material errors of law.

Discussion and analysis

19. I have indicated above when going through the individual findings made by the Judge that they are sustainable. I make those findings having considered the evidence available to the Judge, the earlier decision, and the reasons given for coming to such conclusions, as a whole.
20. I have also taken into account the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWAC Civ 462 @ [2] and Ullah v Secretary of State for the Home Department [2024] EWAC Civ 201 @ [26].
21. The findings are clearly within the range of those open to the Judge on the evidence and have not been shown to be rationally objectionable.
22. On that basis the Appellant fails to establish legal error material to the decision to dismiss the appeal.

Notice of Decision

23. No legal error material to the decision to dismiss the appeal has been made out. The determination shall stand.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 June 2024