



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001036

First-tier Tribunal No: RP/00087/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of May 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HM
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms E Blackburn, Senior Home Office Presenting Officer

For the Respondent: Mr C Mupara, from Charles Edwards Solicitors

Heard at Field House on 30 April 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 or his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Somalia born in 1982. He arrived in the UK in 1992, and was granted refugee status as a Bravanese minority clan member, and indefinite leave to remain on 23rd April 1998. He was made the subject of deportation order on 16th December 2017 following his being convicted of some 30 offences in the period 1998 to 2017, and in October 2017 being convicted of the supply of class A drugs and sentenced to 37 months imprisonment. On 17th April 2018 a decision was made to revoke his refugee status. In response to these decisions the claimant made a human rights claim. Decisions were made by the respondent dated 4th February 2019, 13th June 2020 and 24th July 2022 refusing him leave to remain in the UK on protection and human rights grounds. The claimant's appeal against the decisions was allowed by First-tier Tribunal Judge Lucas in a determination promulgated on the 22nd January 2024.
2. Permission to appeal was granted to the Secretary of State on 20th February 2024 on all grounds by Judge of the First-tier Tribunal Rhys-Davies on the basis that it was arguable that the First-tier judge had erred in law in failing to apply the country guidance in OA (Somalia) Somalia CG [2022] UKUT 00033 and stating that the country guidance does not consider mental health and long absence from Somalia when arguably these matter are addressed in the country guidance case. It is also found to be arguable that there was a failure to make a specific finding on the s.72 certificate, although arguably there was a finding that the claimant is rehabilitated there was no specific finding on the s.72 issue. In addition it is also arguable, although perhaps less so, that the First-tier Tribunal made a mistake of fact in stating that the claimant had refugee status at paragraph 54 of the decision when it had in fact been revoked.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to decide if any such error was material and whether the decision should be set aside.

Submissions - Error of Law

4. In the grounds of appeal and oral submissions from Ms Blackburn in short summary it is argued as follows.
5. It is argued in the first and second grounds that the First-tier Tribunal failed to determine the appeal in accordance with the country guidance in MOJ and OA without giving sufficient reasons as to why this was not done. There is no explicit consideration of what is said in the expert reports or reasons why this evidence means the claimant is at risk in Somalia in the context of the general country guidance. Further there was a failure to make a lawful decision in relation to the Article 8 ECHR appeal as there were no reasons given for finding that there were

compelling and exceptional circumstances and no proper balance sheet decision as per HA (Iraq) [2022] UKSC 22.

6. In the third ground it is argued that there are no findings in relation to the s. 72 Nationality, Immigration and Asylum Act 2002 certificate in the decision of 4th February 2019 which there needed to be. Ms Blackburn clarified that the claimant did not give evidence at the hearing before the First-tier Tribunal because it was set out in his skeleton argument that he was not fit to do so, there was no concession on the s.72 certificate by the respondent and paragraph 51 and 52 contain findings both way on the issue: it is noted the claimant has committed serious criminal offences and a serious of convictions which place the claimant “at risk of being described as a persistent criminal” as well as that “he is at low irsk of harm/ further offending and is described by the expert as totally rehabilitated.” This does not suffice to amount to decision on whether the claimant has rebutted the presumption that he is danger to the community.
7. In the fourth ground it is argued that the First-tier Tribunal has proceeded on the basis of a material error of fact, namely that the claimant has refugee status, when it is clear that this was revoked in the decision of 4th February 2019. However Ms Blackburn did not rely upon that ground at the hearing.
8. No Rule 24 notice was filed for the claimant, however Mr Mupara defended the decision of the First-tier Tribunal. With respect to the third ground he argued that the representative for the Home Office before the First-tier Tribunal had not cross examined the appellant or other witnesses, and thus the evidence had not been challenged by the respondent. He accepted that there had not been a concession with respect to the s.72 certificate, however there was a statement at paragraph 52 of the decision that the claimant was “at low risk of harm/ further offending and is described by the expert as totally rehaibilitated.” With respect to the first and second grounds Mr Mupara argued that there was substantial expert evidence in two reports dealing with the findings in MOJ and OA and arguing that the claimant was notwithstanding these decisions at real risk of serious harm if returned to Somalia. The Secretary of State had only issued a generic response to this detailed evidence, and so the decision of the First-tier Tribunal should, in this context, be seen to be sufficiently argued.
9. Mr Mupara also argued that the appeal had been allowed on Article 8 ECHR grounds and that the grounds of challenge failed to identify errors of law in this decision, which was articulated at paragraphs 63 to 65, where the First-tier Tribunal found that there were very compelling and exceptional circumstances, with the claimant having strong family and private life in the UK and there being very significant obstacles to his return to Somalia.

10. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had erred in law. I did not give an oral judgement but set out my reasons in writing below. The parties both submitted that the appeal should be remitted de novo to the First-tier Tribunal given the extent of remaking which would involve four expert reports and potentially six witnesses in addition to the claimant's evidence which was set out in four statements running to some 38 pages, with the bundle running to almost 500 pages. I found that this was an appropriate case to remit to the First-tier Tribunal given the extent of remaking.

Conclusions – Error of Law

11. At paragraph 24 of the decision the issues are summarised by the First-tier Tribunal Judge as: “ Is it safe for the Appellant to be returned to Somalia and to revoke his Refugee Status”. There is no reference to the s.72 certificate in the decision and it is not identified as an issue. There is no doubt that this certificate was included in the decision of 4th February 2019, and that s.72 means that the claimant is to be presumed to be a danger to the community of the UK as he has been convicted of a particularly serious crime, as he had sentenced to a period of imprisonment of at least two years. As a result, unless the presumption of his being a danger to the community was found to be rebutted the claimant could not succeed in his asylum appeal. At paragraphs 52, 61 and 67 of the decision of the First-tier Tribunal it is said that the decision to revoke the claimant's refugee status cannot be justified and that he is a “low risk of harm/further offending”, “ and is “totally rehabilitated”. I find however that this is insufficient reasoning to explain a conclusion that the claimant has rebutted the presumption that he is a danger to the community given the findings that he has committed serious criminal offences, had two periods of imprisonment in 2007 and 2019 and could be described as a persistent criminal. Further there is no definitive finding that he has rebutted the presumption that he is not a danger to the community. I find it was an error of law not to have considered this discrete issue and to have fully reasoned any decision in the context of the arguments of the parties, the claimant's long criminal record which includes serious convictions, and the expert evidence and witness evidence before the Tribunal.
12. I also find that the decision is unlawful as it is insufficiently reasoned with respect to the protection claim under the Refugee Convention and Article 3 ECHR. Whilst the First-tier Tribunal is clearly aware of the country guidance decisions in MOJ and OA, as set out at paragraph 59 of the decision, there is no reasoning relating to specific facts as to why that guidance does not apply to the claimant and/or why the evidence of Professor Aguilar is preferred and thus why the claimant is still at real risk of serious harm on return to Somalia notwithstanding what is said in the country guidance cases in circumstances where mental health provision and the conditions in IDP camps are addressed in this guidance.

13. I also find that the Secretary of State has identified errors of law in the decision allowing the appeal under Article 8 ECHR. There is no adequate reasoning explaining how the claimant has or has not met either of the exceptions to deportation set out at s.117C of the Nationality, Immigration and Asylum Act 2002, indeed the exceptions and their requirements are not mentioned in the findings section of the decision at all. Whilst there are conclusions such as: "There are clearly very significant obstacles to his return to Somalia given the above findings", unfortunately the "above findings" do not adequately explain why he would be unable to reintegrate into Somali society with reference to the country guidance, country of origin information and expert evidence before the First-tier Tribunal. The finding that "there are very compelling and exceptional circumstances that displace the decision to deport" the claimant is not accompanied by any reasoning at all.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I remit the remaking hearing to the First-tier Tribunal, with the decision to be remade de novo with no findings preserved by a Judge of the First-tier Tribunal other than Judge Lucas.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30th April 2024