



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002012

First-tier Tribunal No: PA/55391/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th of December 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

H I
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Marziano, Legal Representative

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 26 September 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 is a national of Somalia, who arrived in the UK on 3 July 2021 and made a protection claim. His claim was refused by the respondent on 11 November 2022. His appeal against the respondent's

decision was dismissed by Judge J G Richards in a decision dated 26 October 2023. The Judge introduced his decision as follows:

- “7. The Appellant relied on his witness statement of 30 March 2023.
 8. He stated that he had been contacted by Al Shabab on three occasions, but on each he declined or refused to join them. He said that they were very angry, as other young people in his area were recruited. When they came back and asked again, he said that he could not, as he was the eldest and had to take care of his family. He said he had 3 sisters, 2 brothers and his mother. He said that they were angry, but that they did not do anything.
 9. The Appellant claimed that the shop where he worked gave him some livestock to take to sell in Mogadishu. He was told to use the money from the sale to buy merchandise. He said that he was in the process of buying this merchandise when the police saw him with the money, knew that he was not from around there and so questioned him. They took him to the police station and detained him for 48 hours. He said he was questioned about where the money came from and that the police said the livestock could have been from Al Shabab, as the Appellant had said where he came from and the police would have known that this was an Al Shabab area.
 10. The Appellant claimed that he was ultimately released when one policeman recognised his father’s name and knew that his father was not a member of Al Shabab. Having been released, the Appellant left the area, although the police kept hold of the money and merchandise that he had bought. He had not had trouble with the police since, but had not encountered them again. He remains in fear of the possibility of being rearrested and of what would happen to him thereafter.
 11. The Appellant claimed that, on return, Al Shabab knew that he had taken animals to market. He said that they wanted to tax him. The amount was 40% of the \$230 USD that he made on the sale. When he told them that the police had kept the money and merchandise, they did not believe him and the Emir of Al Shabab in that area had sent two members of Al Shabab to accompany him back to Mogadishu (a 10 or 11 hour journey) to get him to point out the police station. Having done so, they said he could go. He did not know how they verified what he told them or what they were going to do.
 12. On his return, the Appellant was in such fear for his life that he made the necessary arrangements to leave. He thought Al Shabab believed he was working for the police. He has claimed that Al Shabab came looking for him at his home and killed his father for encouraging him to escape.
 13. The Appellant described his route to the UK. He has claimed to have spent around 3 ½ years in France and to have claimed asylum there. This claim was refused.”
2. The respondent did not accept this account as true and maintained this at the hearing.
 3. The Judge heard evidence from the appellant and concluded that the core of his claim was not true. The Judge’s operative reasoning is set out at

[14]-[19]. At [14] and [15] the Judge set out some general observations in respect of the appellant's narrative as follows:

"14. I have to assess whether the evidence the Appellant has given is credible in the round. His account is not very detailed. In particular, his evidence of the circumstances in which his father died is extremely vague. While the Appellant claims he was not there to witness his death, it is nonetheless reasonable to conclude that he would have recalled considerable detail of what he had been told about the death.

15. I have taken account of the fact that the Appellant was relatively young at the time and that he may find talking about his father's death traumatic. Nonetheless, it is inconsistent that the Appellant would describe to Al Shabab having to take care of his family in the way that he did (particularly not mentioning the existence of his father) at a time when, on his own account, his own father (and mother) would both have been alive and working. The account simply does not ring true. I therefore have considerable doubts that the Appellant's father died as the Appellant has claimed."

4. The Judge further found that the appellant's credibility had been damaged by inconsistencies between his written and oral testimony, such as, whether he was accompanied by two or three men from Al Shabab back to Mogadishu, and, his account of being detained by the police "... differed slightly over time..." [16].

5. The Judge continued:

16. ...it seems extremely odd that Al Shabab would embark on a 10 or 11 hour journey to ascertain who had taken his money and merchandise, particularly when they only claimed 40% of the \$230 USD that he had realised. While none of these factors are necessarily critical in and of themselves, they do give the overall impression that he is not being truthful.

17. I have also had some regard to the inherent probability that the Appellant's account is true. I have taken account of the cases of HK v SSHD [2006] EWCA Civ 1037 and Y v SSHD [2006] EWCA Civ 1223 and the fact that an account may seem inherently unlikely does not mean that it is untrue. I have considered the Appellant's social and cultural background. However, for the reasons above, I do not find it credible that the matters described by the Appellant would put him in such fear of both the authorities and Al Shabab as to cause him to embark on a 3 ½ year journey across Europe.

...

19. In all the circumstances, I do not find the Appellant's account credible. While there might be elements of it with some basis in fact, it is insufficient to persuade me that there is a reasonable degree of likelihood that the Appellant would be at risk on return to Somalia."

6. The grounds of appeal can be summarised as follows:

a. The Judge made perverse and irrational findings on material matters.

- b. The Judge's adverse credibility findings are insufficiently reasoned.
 - c. The Judge misapplied the law and made findings without proper regard to the background evidence.
7. Permission was granted on renewed application by Upper Tribunal Judge Kamara on all grounds, based on the Judge having arguably erred in finding that the appellant's account was vague and did not 'ring true' were unaccompanied by any or any adequate reasons.
 8. The respondent resists this appeal for the reasons given in a Rule 24 response dated 19 June 2024.
 9. In response the appellant's representatives filed a skeleton argument dated 18 September 2024. This is essentially a Rule 25 reply.
 10. At the hearing both Mr Terrell and Mr Marziano each spoke to their respective response and reply in their submissions. I shall refer to their submissions as and when necessary to do so.
 11. The grounds essentially attack the basis upon which the Judge reached his factual findings at [14]-[16]. When considering such a challenge to a Judge's findings of fact, numerous authorities have reiterated the need for appellate caution. In *Walter Lilly & Co Ltd v Clin* [2021] EWCA Civ 136 at [83], Carr LJ (as she then was) relevantly held as follows:
 83. Appellate courts have been warned repeatedly, including by recent statements at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The reasons for this approach are many. They include:
 - i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed;
 - ii) The trial is not a dress rehearsal. It is the first and last night of the show;
 - iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case;

[...]
 12. At [85] Carr LJ then summarised some of the circumstances in which appellate interference with findings of fact might still be justified. They include:
 - i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support;

[...]

- iii) Where the finding lies outside the bounds within which reasonable disagreement is possible.

She continued:

- 86. An evaluation of the facts is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and appellate courts should approach them in a similar way. The appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the trial judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.
- 87. The degree to which appellate restraint should be exercised in an individual case may be influenced by the nature of the conclusion and the extent to which it depended upon an advantage possessed by the trial judge, whether from a thorough immersion in all angles of the case, or from first-hand experience of the testing of the evidence, or because of particular relevant specialist expertise.

I note a similar exposition is given in *Volpi v Volpi* [2022] EWCA Civ 464 at [2] and in *Ullah* [2024] EWCA Civ 201.

- 13. Carefully taking that approach, I nonetheless consider that the Judge materially erred in the way he reached his overall conclusion that the appellant's account "did not ring true" for the following reasons.
- 14. I first turn to consider the extent of the appellant's evidence. The Judge recites the evidence at [8]-[13]. It is not entirely clear whether this is a recitation of the appellant's oral evidence or a summary of his witness statement he adopted at the hearing (at [7]), but having considered the appellant's witness statement it is likely to be the former. The appellant's witness statement is a lengthy closed typed document of forty-five numbered paragraphs over ten pages in which he sets out his claim and response to the respondent's refusal letter. At paragraph three of that witness statement the appellant sets out what his mother told him about his father's death after he left Somalia in the following terms:
 - "3. The militant group Al-Shabab killed my father when I left Somalia. After I left the country, they questioned my father and demanded to know where I was. He told him that he last knew of my movements when I was taken by Al Shabab, so he did not know. He told them that, if anything, they should know where I was, not him. Al Shabab accused him of encouraging me to escape and then they shot him in the head. My mother told me about this, telling me that they killed him in front of her and my brother. At the time, they did not allow my family to bury my father either. My mother told me that my family have no hope and just have to stay put. My mother is very happy that I am in the UK. She always said that she hopes I am somewhere peaceful, and that anywhere is better than where they are."

15. At [14] and [16], as extracted above, it is plain from the Judge's comments of the evidence that it was one of disbelief. The Judge refers to the lack of detail in the appellant's account generally and to his 'extremely vague' evidence relating to this father's death. Whilst the Judge noted the appellant's claim that he did not witness his father's death, the Judge was plainly of the view that it was reasonable to expect the appellant to be able to recall 'considerable detail of what he had been told about it'. The Judge's findings at [14] (in particular) are conclusionary statements, but the reasons for them are difficult to discern. In my judgement, it is far from clear to the reader of this decision in light of what the appellant stated at paragraph 3 of his witness statement, why the Judge concluded as he did, and nor is it clear what further details he expected the appellant could provide about his father's death. To this extent, I agree with the submission of Mr Marziano that the Judge's conclusions are unreasonably drawn on the evidence without more.
16. The Judge's conclusions in respect of the appellant's claim relating to his father plainly carried some weight in his assessment of credibility, and I am not satisfied that these conclusions can be divorced from the Judge's finding at [15] which all related to the claimed death of his father.
17. Likewise, I agree, that the Judge's finding at [16], namely, that the appellant's account of being detained by the police in Mogadishu "differed slightly over time" is not supported by adequate reasoning. Mr Terrell, who himself described the Judge's decision as "scant", nonetheless carefully attempted to defend this decision, by suggesting there was indeed a slight tension between the appellant's account, but he did not identify any conflict in the evidence, and even if there is (which I cannot readily discern), it was for the Judge to reason that in a sufficient manner so that the appellant could understand why that gave cause for his claim to be rejected. The Judge did not do that and so the evidential basis on which he formed that view is not clear. Mr Terrell further seized on the Judge's reference to a "slight" difference, but it is clear that whatever the degree of difference, in the Judge's mind the difference also carried some weight in the assessment of credibility. I am persuaded therefore that the Judge did not underpin this finding by reference to the evidence.
18. I find there is further merit in the submission of Mr Marziano that the Judge erred in his consideration of the plausibility of the appellant's account at [16], in respect of the actions Al Shabab would take to claim their 40% share of the \$230 USD he made on the sale of livestock at the market. Whilst the Judge cited the relevant authorities at [17] and had regard to the appellant's social and cultural background, and whilst plausibility remains a legitimate indicator of credibility it requires a certain degree of caution in its application. That caution is absent from this part of the Judge's consideration, on the basis that there is no acknowledgment in the Judge's reasons that he might be poorly placed to judge whether the actions of Al Shabab were "extremely odd" without due consideration being given to the background evidence. As Mr Marziano demonstrated by reference to the background evidence, a 40% share of \$230 USD in the

context of the economic conditions in Somalia, would not necessarily be a small amount to render the appellant's account implausible. I take account of the submission of Mr Terrell that the Judge stated that none of these findings were "critical", but nonetheless, they did form part of the Judge's "overall impression" that the appellant's account was not true. Even applying due appellate restraint, I conclude that the Judge was not rationally entitled to assume how Al Shabab would act without the necessary context being considered, such as to place adverse weight upon this part of the appellant's account.

19. In summary, therefore, I find that the Judge's conclusions at [14]-[16] are unreasonable in light of the evidence and are insufficiently reasoned.
20. The credibility of the appellant's claim was of fundamental importance given that the Judge was of the view that had he found the appellant was at risk his appeal for international protection was likely to succeed (at [21]). In the circumstances, I am not persuaded by Mr Terrell's submission that the Judge's findings at [20] are sufficient to save this decision in the alternative. As Mr Marziano pointed out, it was not the appellant's claim that the authorities had no further interest in him after he left Somalia, and the absence of a convention reason did not preclude the appellant from succeeding in a claim for international protection.
21. The error of law argued by the appellant, as summarised at paragraph 19 above, is therefore established. As these conclusions underpinned the overall decision on the appeal, it was material and the Judge's decision must be set aside.
22. Applying the principles set out in the Practice Direction and the Practice Statement, according to the guidance given in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), the parties are in agreement the appeal in the circumstances ought to be remitted with no findings of fact preserved. I consider it appropriate to remit the appeal to the First-tier Tribunal for complete re-hearing. This is because it is unclear that the appellant has yet had the benefit of a fair hearing in the First-tier Tribunal. The appellant did not raise any procedural unfairness, but nonetheless, that potential loss of a fairly conducted two-tier decision-making process justifies remitting the appeal to the First-tier Tribunal.

Notice of Decision

- (i) The decision of the First-tier Tribunal contains a material error of law and is set aside.
- (ii) The case is remitted to the First-tier Tribunal for re-hearing with no findings of fact preserved, to be heard by any judge other than Judge J G Richards.

R Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 November 2024