



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-002221

First-tier Tribunal No:
PA/55484/2023
LP/01513/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 August 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A.M.N.

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr S. Walker, Senior Home Office Presenting Officer
For the Respondent: Mr A. Pipe, Counsel instructed by SWF Solicitors Ltd

Heard at Field House on 26 July 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant and any member of his family 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 and any member of his family. Failure to comply with this order could amount to a contempt of court. The Order has been made due to the protection issues raised in the appeal.

DECISION AND REASONS

Introduction

1. In this appeal the Secretary of State for the Home Department is the Appellant but for ease of reference with the First-tier Tribunal decision, I shall refer to the parties as they were at that hearing.
2. The Respondent has appealed the decision of Judge C. L. Taylor (hereafter “the Judge”) who allowed the Appellant’s protection appeal by way of a decision promulgated on 25 March 2024.
3. The First-tier Tribunal initially refused permission to appeal to the Upper Tribunal of 10 April 2024 (the decision of First-tier Tribunal Judge Cox) but permission was granted by the Upper Tribunal (Deputy Upper Tribunal Judge Lewis) on 30 May 2024.

Relevant background

4. The Appellant is a Somali national who claimed asylum in the UK on 1 March 2022. There is no dispute between the parties that the Appellant previously claimed asylum in Sweden (on 6 April 2021) which was refused by the Swedish authorities; the Appellant did not appeal that decision.
5. It is also not in dispute that the Appellant travelled to the UK through a number of other countries including the Republic of Ireland where the Appellant resided for an unspecified amount of time between 26 February 2022 and his entry into the UK on 28 February 2022.
6. In the refusal, the Respondent accepted that the Appellant is a member of the Geledi clan (which is a sub-group of the Rahanweyne) and that he had been exploited by the Hawiye clan in Afgoye in the past.
7. The Respondent however did not accept the Appellant’s claim to be of adverse interest to Al Shabaab including rejecting the Appellant’s claim that he was kidnapped by that organisation. Importantly, the Respondent also raised section 8(4) of The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Claimants Act”) in respect of the Appellant’s failure to claim asylum in Ireland before arriving in the UK.

The decision of the First-tier Tribunal

8. It must be said from the outset that the First-tier Tribunal’s decision is extremely brief albeit the same can be said for the Respondent’s refusal letter which appears to be typical of a trend of relatively brief decisions being produced by the Respondent.

9. Overall, the Judge accepted the submissions made on behalf of the Appellant as summarised at §§13 & 14 (see §15) and concluded that the Appellant had provided reliable documentary evidence from Somalia. Furthermore, the Judge concluded that the Appellant's overall evidence was reliable applying the lower standard of proof.
10. The Judge therefore concluded that the Appellant had credibly established a real risk from Al Shabaab as he had claimed and that he could not internally relocate applying the Upper Tribunal's Country Guidance in MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442 (IAC).

The error of law hearing

11. The error of law hearing was conducted in person: the Appellant, his barrister and the Respondent's Senior Presenting Officer were all present in the hearing room. The Upper Tribunal had previously decided to refuse the Appellant's request for a Somali interpreter.
12. I heard competing submissions from the representatives: Mr Walker emphasised the points made in the grounds with particular reference to the reasoning given for granting permission by Deputy Upper Tribunal Judge Lewis.
13. In response Mr Pipe emphasised the importance of judges providing succinct decisions and argued that, read as a whole, the Judge had given sufficient reasons for accepting the Appellant's account including the credibility of his claim to have been targeted by Al Shabaab.
14. Having heard the competing submissions, I indicated that I was persuaded that there was a material error in the Judge's decision and both representatives agreed that, under the circumstances, the entirety of the decision of the Judge should be set aside.

Findings and reasons

15. The grounds of appeal drafted by the Respondent are not the most helpful in that they are not properly structured and are rather brief. It is however evident that the Respondent raised the absence of any consideration of section 8 of the 2004 Claimants Act as a sub-ground against the decision of the Judge.
16. I have considered Mr Pipe's well-made submissions very carefully and I have no hesitation in agreeing that succinct judgments of the Tribunal are to be encouraged. I also have no difficulty at all with the submission that binding authority makes plain that a Court/Tribunal should be slow to interfere with factual findings made by the fact-finding Tribunal.
17. The material error in this case however is, in my view, very clear. The Respondent raised section 8(4) of the Claimants Act on the basis of the undisputed fact that the Appellant had resided in the Republic of Ireland

before travelling to the United Kingdom to claim asylum. I accept Mr Pipe's submission that it is not entirely clear how long the Appellant was in Ireland before travelling to the United Kingdom but that is ultimately not the key point.

18. The wording of section 8 is clear that decision-makers must take specified behaviour into account and must consider whether a reasonable explanation has been given for such behaviour.
19. In this case the Judge noted that the Respondent had raised the section 8 issue at §10 but then said no more about it. This is a clear material error of law.
20. The importance of applying section 8 in the assessment of credibility is not only emphasised in the mandatory wording of the section itself but has also been reiterated by the Court of Appeal, for instance in KG (Turkey) v Secretary of State for the Home Department [2022] EWCA Civ 1578 at §33.
21. At §43, Lord Justice Lewison further remarked:

"A professional judge has a duty to give reasons for their decision. A failure to give adequate reasons is an error of law. Although reasons may be brief they must address the principal controversial issues..."

Notice of Decision

The Respondent's appeal is allowed and the decision of the Judge set aside in its entirety.

DIRECTIONS

- i. The appeal is to be heard de novo in the First-tier Tribunal, before a judge other than Judge C. L. Taylor.
- ii. The hearing must be heard in-person at Taylor House.
- iii. The appeal is to be listed for 3 hours.
- iv. The parties will be expected to address the Tribunal on the guidance given in OA (Somalia) (CG) [2022] UKUT 33 (IAC) and any Country Guidance relating to the status of the Geledi in Somalia.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 July 2024