Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01877/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 26 June 2015	**On 7 July 2015**
Prepared on 27 June 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

M M
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Mills, Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Somalia, born 20 September 1987, and now aged 27.
2. On 23 September 1992, and thus aged 5, he entered the UK in the company of his mother and 4 other siblings. He had been granted entry clearance for settlement under the

refugee family reunion policy because his father had been recognised as a refugee from Somalia.

3. On 3 March 1994 the Appellant was granted refugee status in his own right, and in turn ILR.
4. On 23 March 2010 the Appellant was notified that the Respondent intended to revoke both his refugee status and the grant of ILR. On 15 April 2010 UNHCR were notified by the Respondent of that intention too. For reasons that are unexplained that did not then occur. A further notice to this effect was then issued to the Appellant on 7 May 2014, and to UNHCR on 29 May 2014. The Respondent eventually revoked the refugee status and the grant of ILR on 16 July 2014.
5. On 30 August 2014 the Respondent decided that s32(5) of the UK Borders Act 2007 applied to the Appellant following a number of convictions, including robbery, and the supply of Class A drugs.
6. The Appellant appealed to the Tribunal against that decision and his appeal was heard on 27 November 2014, and dismissed by decision of Judge Robinson, promulgated on 19 December 2014.
7. The Appellant's application to the First Tier Tribunal for permission to appeal, as drafted, raised two complaints; (i) that the Judge had failed to follow the country guidance to be found in MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 442, and had failed to give adequate reasons for departing from it, and (ii) that the Judge had not given adequate reasons for his conclusion that the Appellant would be able to obtain assistance from his father's clan, given the lack of contact with his father.
8. That application was refused by Judge Osborne on 15 January 2015 on the basis that the decision showed that the FtT had referred to and followed the guidance to be found in MOJ, and had found that the Appellant derived clan membership of the Issaq through his father, would not be at risk from other clans as a result, and would be able to obtain help from members of his clan. Those findings were open to the FtT on the evidence and were adequately reasoned.
9. The application was renewed to the Upper Tribunal and granted by Upper Tribunal Judge Grubb on 23 April 2015 on the basis it was arguable that MOJ had not been properly applied, and that the FtT had underestimated the difficulty of one who had left Somalia at the age of 5 in tracing family or obtaining clan protection in Mogadishu.
10. The Respondent filed a Rule 24 Notice of 25 June 2015 in which she asserted that the Judge had given adequate reasons for his adverse findings and that MOJ had been properly applied.
11. Thus the matter comes before me.

Error of Law?

12. It is plain, and Mr Mills accepts, that the Judge was referred to the decision in MOJ [27] and that he sought to apply its guidance. He also considered the previous position as described in AMM (conflict;humanitarian crisis;returnees;FGM) Somalia CG [2011] UKUT 445 [53-58]. Thus it was argued that the guidance contained in MOJ had not been applied correctly to the evidence.
13. Although the Appellant appears to have sought to deny it before the FtT, it is plain that he derives clan membership of the Isaaq clan through his father in accordance with Somali tradition. Thus, as the Judge correctly found, he is a member of the Isaaq clan, a majority clan, and the clan most prevalent in the north of Somalia, particularly in Somaliland.
14. Although Mr Mills argued that the Appellant might have difficulty in demonstrating to the satisfaction of clan members that he was a member of the Isaaq, I note that the Appellant had offered no evidence at the appeal from clan elders based in the UK to suggest either that he was not recognised by them as a member of the Isaaq, or, to offer any reason why in their opinion the members of the Isaaq in Somalia would not also do so. The Appellant did not suggest that he did not know who his own father was, or what his paternal lineage was. He did not provide evidence to show that clan elders based in the UK would be unable or unwilling to vouch for him to clan elders in Somalia if asked to do so. Thus in my judgement there was no evidential basis upon which the Judge could, or should, have found that the Appellant would be unable to demonstrate membership of the Isaaq to the satisfaction of the members of that clan based in Somalia, either before, or after his arrival in that country.
15. Thus I am satisfied that Mr Mills could derive no assistance from the quotation from the Danish FFM of April 2013 set out in paragraph 2.2.13 of the Country Information report upon Somalia. It was open to the Appellant to make contact with clan elders in the UK, and through them to clan elders in Somalia to benefit from the assistance of the clan.
16. Although Mr Mills argued that the Appellant could not access the support of the Isaaq without the assistance of his father, there was no adequate evidential basis for that claim. Indeed the evidence that was placed before the FtT demonstrated quite clearly that the Appellant and his extended family were in contact with his father. Although his father is a recognised refugee from Somalia members of the family accepted that he was in the habit of returning there. Thus L M in her statement of November 2014 accepted that she knew her father sometimes travelled to Somalia, although she qualified that by saying the family did not always know where he was. She accepted that he would

have connections in Somalia but did not know what they were [ApSpBd p11#12]. There was therefore no error in the Judge's assessment that he "*may have extended family members in Somalia but it is difficult to assess what assistance, if any, he could expect from them or his father*" [56].

17. Mr Mills also argued that the Appellant faced a language barrier to accessing clan support; a proposition based upon the claim in evidence by the Appellant and his mother that he could not speak Somali. That claim was however rejected by the Judge who noted that since his mother did not speak English, they must use Somali to communicate. He also noted that it was accepted in cross-examination that he spoke Somali to the aunt who had given evidence. Thus although the Appellant had claimed to speak Somali very badly the Judge found that the Appellant would be able to communicate easily and would not be handicapped by lack of fluency in the local dialect [77]. I am satisfied that those findings were well open to the Judge on the evidence, and that they were adequately reasoned.
18. Finally Mr Mills argued that following deportation the Appellant would have no access to financial support, and that it was not open to the Judge to find, or to infer the contrary. Put simply I am not satisfied that such an argument is open on the evidence, or was properly raised in the grounds. The Appellant accepts that his extended family living in the UK includes his mother, his five sisters, his four brothers, his three aunts and his three uncles and their respective spouses and about twenty cousins. Without further detailed exploration of his family connections that evidence meant that he had some 35 potential sources of financial support from relatively close family members upon his deportation to Somalia. Only some of those family members gave evidence to the FtT. Having gone through the witness statements of those who did with Mr Mills I am satisfied that whilst some baldly denied that as students they were able to provide financial support, none offered any detailed evidence about their financial circumstances. Some had even accepted that they had given the Appellant financial support in the past, and offered no explanation as to why they could not be expected to do so again in the future should he need it.
19. In these circumstances there was no error on the part of the Judge in his assessment of the evidence upon the true nature of the Appellant's own circumstances upon his deportation to Somalia.
20. The Judge considered the guidance set out in MOJ in the context of an attempt to settle in Mogadishu because the point of return to Somalia was identified as Mogadishu. As Mr Mills accepted however the Appellant was not obliged to

try to settle there, he could for example make his way immediately to Somaliland by internal flight if he chose to do so. If he went to live there, then the evidence was that this was a stable and functioning society which was dominated by the Isaaq. The evidence did not suggest that the Appellant would face a breach of his Article 3 rights there.

21. If the Appellant did choose to settle in Mogadishu then the evidence placed before the Judge did not demonstrate that there had been any significant change since the position as it was reviewed in MOJ. On the facts of this case the Appellant derived no assistance from paragraphs 342-352 or 407(h) of that decision. He would not face either Al-Shabab, clan militias, inter-clan violence, or inter-clan discrimination. As a majority clan member, fluent in English, with skills and qualifications, and with the opportunity to draw not only upon Isaaq clan support for access to support mechanisms and livelihoods, and with the opportunity for financial support from his extended family in the UK, it was therefore for him to explain why he would not be able to take advantage of the opportunities offered by the "economic boom" taking place in Mogadishu so as to make a life for himself there in safety. He singularly failed to do so.

22. In these circumstances the criticisms that have been advanced of the decision are either inconsistent with the evidence, or, they are in reality no more than a disagreement with the Judge's conclusions. The Judge applied the correct burden and standard of proof to the evidence placed before him, and gave entirely adequate reasons for his conclusions which were well open to him on the evidence. Thus the approach he took to the evidence does not disclose any error of law that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 19 December 2014 contains no error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Deputy Upper Tribunal Judge JM Holmes
Dated 27 June 2015

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent.

Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes
Dated 27 June 2015