



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11802/2016

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 8th May 2018

Decision & Reasons Promulgated
On 7th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

D A M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford of Counsel instructed by Sultan Lloyd Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Asjad (the judge) of the First-tier Tribunal (the FTT) promulgated on 23rd May 2017.
2. The Appellant is a Somali national. He entered the UK on 16th April 2016 and claimed asylum. His wife and six children are dependants in his claim.
3. The application was refused on 14th October 2016 and the Appellant appealed to the FTT.

4. The appeal was heard on 20th April 2017 and dismissed. The Appellant applied for permission to appeal and the grounds are summarised below.
5. It was submitted that the judge erred in law in rejecting the Appellant's account of the persecution and reprisal he suffered in early 2016 for refusing to join or support Al Shabab's insurgency without taking into account objective country information supplied by and relied upon by the Appellant. This objective country information was attached to the Appellant's skeleton argument, which was before the FTT.
6. It was submitted that the judge erred at paragraph 16 in taking into account only the country evidence referred to by the Respondent in the refusal decision dated 14th October 2016. Unlike the country evidence adduced by the Appellant, the Respondent's country evidence did not go to the question of whether there was an insurgency in the Appellant's home area in early 2016.
7. It was also contended that the judge erred materially in failing to decide whether the Appellant was a minority clan member when assessing whether there was a reasonable internal relocation option to Mogadishu. It was submitted that the country guidance case of MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 00442 directs the Tribunal to have regard to the insurmountable obstacles to return to Mogadishu for minority clan members generally.
8. It was submitted that the judge had materially erred at paragraph 18 by failing to take into account that the Appellant would be returning to Mogadishu after an absence of twenty years, and would be returning with a wife and six children, one of whom needs ongoing medical attention. It was submitted that the judge had failed to provide adequate reasons as to how the Appellant would establish a home and a living for himself and his dependants in the absence of family or clan support. It was submitted that the judge had materially erred in considering that the country guidance decision indicates that the Appellant could obtain support in Mogadishu from members of his own minority clan. The judge had erred by failing to explain why the Appellant's friend could prevent the Appellant and his dependants from having to live in unacceptable makeshift conditions in an IDP camp.
9. Permission to appeal was granted by Upper Tribunal Judge Canavan in the following terms;
 - "2. It is likely that the judge was entitled to consider several inconsistencies in the Appellant's recorded evidence in assessing the credibility of his account of events. The fact that the account was broadly consistent with the background evidence relating to the nature of attacks by Al Shabab might have formed one part of the assessment, but was unlikely to make any material difference to the credibility findings given the number of inconsistencies identified by the judge.
 3. The judge referred to the relevant country guidance and proceeded on the basis that the Appellant was from a minority clan [18]. However, it is at least arguable that the judge may have erred in his assessment of return to Mogadishu. It is arguable that the judge failed to give sufficient consideration to the length of time since the Appellant last lived in Mogadishu or his lack of support network there. It is unclear why the judge considered that his father still had a friend in

Mogadishu who would be able to provide assistance. After brief consideration of the evidence the only reference that I can find to his father's friend was in the Appellant's initial statement, which suggests that his father's friend lived in Hawaadleey [6]. It is also arguable that the judge's finding that the Appellant could rely on assistance from clan members is contrary to what is said at [vi] of the headnote in MOJ (Somalia).

4. Given that the conditions in Mogadishu might, in certain circumstances, still amount to a breach of human rights, it is at least arguable that the judge failed to take into account all of the relevant circumstances in assessing the best interests of the children. The grounds merit more detailed consideration at a hearing.
 5. Permission to appeal is granted."
10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FTT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

11. Mrs Aboni, on behalf of the Respondent, conceded that the judge had materially erred in law. It was accepted that the judge had failed to adequately apply the guidance in MOJ (Somalia) in relation to internal relocation to Mogadishu. Mrs Aboni accepted that there was inadequate consideration of the best interests of the Appellant's children. It was accepted that the judge had not referred to the background evidence highlighted in the grounds seeking permission to the Upper Tribunal, and which was attached to the Appellant's skeleton argument. It was accepted that the background evidence relied upon by the Appellant post dated the background evidence referred to in the Respondent's refusal decision which was considered by the judge.
12. Both representatives submitted that the decision should be set aside and remitted to the FTT to be heard again.

My Conclusions and Reasons

13. In view of the concession by the Respondent, I set aside the decision of the FTT. I found that the judge had materially erred as contended in the grounds, read together with the grant of permission, and as conceded by the Respondent.
14. No findings can be preserved. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, and consider it is appropriate to remit this appeal back to the FTT to be decided afresh. This is because there is a substantial fact-finding exercise to be undertaken, and it is more appropriate that findings of fact should be made by the FTT rather than the Upper Tribunal.
15. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FTT Judge other than Judge Asjad.
16. The Appellant's representatives should be aware that the Appellant's bundle in its entirety is not on the Tribunal file. The Tribunal file only contains pages 1 - 70 of the

Appellant's bundle, and therefore a new bundle will need to be served upon the FTT. It is understood that the Respondent still has the full bundle of documents.

Notice of Decision

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

4th June 2018

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FTT.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

4th June 2018