



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004281
First-tier Tribunal No:
PA/52668/2022
IA/09980/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

AMI
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. G. Symes, Counsel instructed by Justice and Rights Law Firm (Ltd)

For the Respondent: Mr. A. Basra, Senior Home Office Presenting Officer

Heard at Field House on 7 November 2023

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. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Manyarara, (the “Judge”), dated 4 July 2023, in which he dismissed the Appellant’s appeal against the Respondent’s decision to refuse his protection and human rights claim. The Appellant is a national of Somalia who experienced problems in Somalia from Al Shabaab.
2. Permission to appeal was granted by First-tier Tribunal Judge Dixon in a decision dated 29 September 2023 as follows:

“The appellant claims to be at risk on return to Somalia from Al Shabaab. The Judge appears to have found his account to be credible but it is argued, in ground 1, that the Judge did not make a finding as to an important facet of the appellant’s account, namely whether he had (as he claimed) direct contact from Al Shabaab in the form of threatening phone calls. Paragraph 10.3 of the decision makes reference to the appellant’s evidence on this. It is submitted that a finding needed to be made in view of the Judge’s overall conclusion that the appellant had not been specifically targeted and was thus not at risk. I have reminded myself that it is not incumbent on judges to make findings on all matters raised and all aspects of the evidence but it does seem here arguable that the Judge should have specifically addressed the threatening phone calls which was a key element of his case. Ground 2 follows on from that ground as indeed does ground 3.”

The hearing

3. The Appellant attended the hearing. I heard oral submissions from both representatives following which I stated that I found the decision involved the making of material errors of law, and set the decision aside. I heard further submissions on the remaking of the appeal. I reserved my decision.

Error of law

4. Ground 1 asserts that the Judge failed to make findings in respect of a key aspect of the Appellant’s claim. The Judge found the Appellant to be a credible witness. At [29] he states that he is a “truthful witness who has given an internally consistent account”. The grounds assert that the Judge did not then proceed to make any findings on a key aspect of the Appellant’s claim, that Al Shabaab were making phone calls and issuing threats before and after the attack in May 2019. It is argued that this is material as the Judge finds at [35] that “the appellant was not specifically targeted by Al Shabaab and appears to have been caught up in the previous volatile situation at the time”. It was submitted that, given that the Judge had found the Appellant’s account credible, the lack of finding in respect of direct contact between Al Shabaab and the Appellant led to arguably flawed findings being made in respect of risk on return.
5. I find that this ground is made out. At [10] the Judge sets out the evidence given by the Appellant in cross-examination. At [10.3] he states:

“Al Shabaab used to phone him anytime during the day or night. Al Shabaab are the only organisation known to use withheld numbers. That is how he knew that they were the ones calling him. He could also tell it was them by the way they spoke to him. Every government department had informers and that is probably how Al Shabab obtained his telephone number. Al Shabaab did not approach him when he was at work as it is not possible for them to do this.”

6. At [29] the Judge finds:

“I have derived considerable benefit from hearing the appellant giving oral evidence before me. Having heard the appellant giving evidence, I find him to be a truthful witness who has given an internally consistent account before me, in relation to the centre-piece of his claim. I find that:

29.1 the appellant worked for the Ministry of Education in Somalia as an administrative assistant;

29.2 the appellant’s work place was raided in May 2019, but the appellant was not specifically targeted or harmed at that time;

29.3 the appellant’s home was raided on 20 August 2019, 5 September 2019 and 12 November 2019 but the appellant was not at home on those occasions; and

29.4 the appellant spent some time staying with work colleagues prior to his departure from Somalia.”

7. The Judge has made a finding that the Appellant was a “truthful witness” who gave an “internally consistent account” in relation to the “centre-piece of his claim”. However, when making specific findings following on from this general credibility finding, there is no reference to the Appellant’s claim that he was repeatedly phoned by Al-Shabaab. The Appellant’s claim was that he had been specifically targeted by Al-Shabaab, so I therefore find that any evidence as to contact from Al-Shabaab is part of the “centre-piece of his claim”. Given the finding at [29], it must be assumed that the Judge accepted this part of his evidence, but there is no reference to it. If the Judge did not accept this part of the Appellant’s evidence, he has failed to give reasons for why he has not accepted it, given his general credibility finding. It is clear that the Judge was aware of this aspect of the Appellant’s claim as he has set it out at [10.3].

8. The Appellant’s evidence as set out in his witness statement in relation to these calls is as follows:

“When I started working, I was receiving calls from Al Shabaab. There (sic) were calling me in the morning or after my work. Initially I was ignoring the calls but they became more intense. They introduced themselves as Al Shabaab. They called me from a private number and insulting by calling Murtagh (non-believer).

They threatened me that if I do not leave my job and started (sic) working for them, I would be killed. They did not approach me in person as this is the way how do (sic) they work. Initially they do call and threaten people. Because I was working for the government, I had some extra protection so they did not come to me in person at that time.”

9. At [32] the Judge finds “The appellant does not suggest that his home was targeted by Al Shabaab during the period that he worked for the government. I find that this does not, therefore, sit well with the claim that he was targeted as a result of his work for the government.” However, the Appellant’s evidence before the Judge was that he was targeted by Al Shabaab when he was working for the government.

10. The Judge then goes on to find at [35]:

“I find that the appellant was not specifically targeted by Al Shabaab and appears to have been caught up in the previous volatile situation in Mogadishu at the material time.”

11. Given the Appellant's evidence that he was repeatedly phoned by Al Shabaab, and the Judge's finding that he was a truthful witness and that the centre-piece of his claim was consistent, it is difficult to see how the Judge can have come to the finding that he was not specifically targeted. I find that this is an inconsistent and unreasoned finding.
12. Ground 2 follows on from this, with reference to the finding that the Appellant's home had been raided. At [10.4] the Judge set out the Appellant's oral evidence:

"Al Shabaab raided his work place in May 2019. They also raided his house on 20 August 2019, 5 September 2019 and 12 November 2019. He was not at home and his wife told him about the raids. He was staying with another government worker."
13. At [29.3] he finds:

"the appellant's home was raided on 20 August 2019, 5 September 2019 and 12 November 2019 but the appellant was not at home on those occasions;"
14. I find that this finding is inconsistent with the Judge's later finding that the Appellant was "not specifically targeted by Al Shabaab". The Judge has failed to explain why he has concluded that the Appellant was not specifically targeted given his earlier finding that the Appellant's home was raided on three separate occasions.
15. I find that Grounds 1 and 2 are made out. I find that the Judge has failed to make findings about a key aspect of the Appellant's claim, despite finding that he had given a consistent account. His conclusions are inconsistent with his findings that the Appellant's account was credible, and with his specific finding that the Appellant's home was targeted. Given that these findings go to the core of the Appellant's claim, I find that these errors are material.
16. Mr. Basra accepted on behalf of the Respondent that, were I to find that either ground 1 or 2 was made out, Ground 3 identified a material error of law. Ground 3 asserts that the Judge erred in his consideration of sufficiency of protection, and that his conclusion at [35] that the Appellant "would be able to access the protection of the government were he to receive any suspected attention from Al Shabaab" was not reasonable based on the Judge's findings.
17. Mr. Basra accepted, with reference to the [2.5.7] of the CPIN, Somalia: Al Shabaab, November 2020 (the "CPIN"), that the Appellant would not be able to obtain effective protection from the state if Al Shabaab had been behind the phone calls and raids on the Appellant's home.
18. I find that Ground 3 identifies a material error of law. The Judge found at [31] that the Appellant was an administrative assistant for the Ministry of Education. Therefore he did not have "a significant/official role within government". On the basis of this finding, with reference to [2.5.7] of the CPIN, he would not be able to obtain protection from the government.
19. I find that the Grounds are made out and that the decision involves the making of material errors of law.

Remaking

20. I set the decision aside except that, as stated at the hearing, the findings at [28], [29], [30] and [31] are preserved.
21. At [29] it was accepted that the Appellant was a truthful witness and that the “centre-piece” of his claim was internally consistent. Having preserved this finding, I accept the Appellant’s account in full. I therefore find that it follows that the Appellant received telephone calls from Al Shabaab when he was working for the Ministry of Education as an administrative assistant. I find that his workplace was raided in May 2019. I find that his home was raided on three occasions in August, September and November 2019. I find that these phone calls, the raid at his workplace, and the raids at his home were carried out by Al Shabaab. I find that the Appellant was targeted by Al Shabaab.
22. In his submissions Mr. Basra accepted that the Appellant would not be able to avail himself of the protection of the state on account of his low level work in the government, with reference to [2.5.7] and [2.5.8] of the CPIN. He submitted however that the Appellant would be able to internally relocate. The Appellant had family and networks in Mogadishu. With reference to [407(h)] of MOJ and others Somalia CG [2014] UKUT 00442 he submitted that he could relocate to Mogadishu even though he had not lived there before. He had been a low level government official, and was not high profile.
23. Mr. Symes submitted with reference to [2.6.8] of the CPIN that the Appellant would not be able to internally relocate. This states:

“Persons who work for the international community or Somali government officials or is a parliamentarian, or a defector with a high profile, or is able to demonstrate continuing high interest to Al Shabaab, will be unlikely to be able to internally relocate within south and central Somalia as Al Shabaab is likely to have the means and motivation to pursue such persons.”
24. He submitted that “with a high profile” referred only to “a defector”, and that it was not necessary to be a Somali government official with a high profile in order to be able to demonstrate an inability to internally relocate. I accept this submission and find that “with a high profile” refers only to “a defector”. Mr. Symes submitted that the Appellant, as a person who worked for the Somali government, would be unlikely to be able to internally relocate. The Appellant had shown that he had been pursued by Al Shabaab over the phone and through raids on his workplace and home. He submitted that the continued interest in him meant that he would not be able to internally relocate, and would therefore be at risk on return.
25. I accept this submission and find, in reliance on the evidence in the CPIN, that the Appellant would not be able to internally relocate as he was a Somali government official who was targeted by Al Shabaab.
26. I therefore find that there is a real risk that the Appellant will suffer persecution on return to Somalia, and so his claim succeeds on asylum grounds. As I have allowed his claim on asylum grounds I do not need to consider his claim to humanitarian protection. I find that returning him to Somalia would cause the United Kingdom to be in breach of its obligations under Articles 2 and 3 of the ECHR.

Notice of Decision

27. The decision of the First-tier Tribunal involves the making of material errors of law. I set the decision aside.

28. I remake the decision allowing the Appellant's appeal on asylum grounds.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 November 2023