

Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09359/2010

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24 June 2013

Determination Promulgated  
On 29 July 2013

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AHMED ABDULLAH WASUGE

Respondent

**Representation:**

For the Appellant: Mr J McGirr, Senior Home Office Presenting Officer  
For the Respondent: Ms P Solanki, instructed by Mellor & Jackson, solicitors.

**DETERMINATION AND REASONS**

1. This was an appeal with permission granted to the Secretary of State, the respondent below. The claimant is a Somali citizen, born in 1940 and now 73 years old. He came to the United Kingdom on 26 May 2010 and claimed asylum on arrival. The Secretary of State refused his claim for asylum, humanitarian protection or leave to remain on human rights grounds.
2. The claimant was one of those present in the local hotel in Beledweyne in which there was a large explosion. He was taken by the Somali government to Kenya for medical treatment and has not returned to Somalia since then. He has a number of physical problems arising out of that explosion and his age. He has significant hearing loss. A

letter from his GP indicates that he has chronic back pain caused by torture in his home country, for which he needs regular medication and pain relief, and that he has type 2 diabetes.

3. The claimant has been treated in the United Kingdom for a suspected heart attack; he was admitted to North West London Hospital on 21 January 2012 with unspecified chest pain, hypercholesterolaemia, hypertension, dyslipidaemia, and ischaemic heart disease. A coronary angiogram indicated widespread coronary vessel disease; a coronary artery bypass graft was recommended, but the claimant refused surgery. He now takes a number of heart-related medications: atorvastatin, glyceryl trinitrate spray, bisoprolol and isosorbide mononitrate, levothyroxine, clopidogrel and furosemide.
4. The claimant appealed and although he was unsuccessful before First-tier Tribunal Judge Law in August 2010, he challenged that decision and his appeal before FTJ Woodhouse on 19 February 2013 was successful. The First-tier Tribunal Judge accepted as credible his account of having been present in Beledweyne in Somalia from 2004-2005 and 2007-2009, during which Al-Shabab was present in the southern and central areas of Somalia.
5. He was an elder and a member of the majority Hawiye clan. He was questioned by Al-Shabab on a number of occasions because of his status as an elder within that clan, and also because of his stated opposition to their violent activities, the last occasion being in May 2009. He was not ill-treated during those discussions despite his public role as an advocate for a peaceful resolution in the region. Al-Shabab has since been defeated and it is not suggested that the claimant remains at real risk of harm from them or from the Somali government. First-tier Tribunal Judge Woodhouse dismissed his asylum, humanitarian protection and Article 3 ECHR appeals, then proceeded to consider his appeal under Article 8 ECHR.
6. She did so based on the claimant's current health problems and the private and family life he has developed in the United Kingdom. Although the claimant still has family members in Somalia and would receive financial and social support because he is a Hawiye elder, he also, the Secretary of State accepted, had family life with his son Abdi in Manchester until Abdi moved to Northern Ireland. The claimant lives now with a friend in London. His life is focused on managing his serious health complaints and she was not satisfied that the complex medication required to regulate his heart would be available in Somalia. The claimant's appeal was allowed under Article 8 ECHR outside the Immigration Rules.
7. The Secretary of State sought permission to appeal on four grounds, two of which were a challenge to the judge's Article 8 reasoning and which Designated Judge Digney considered were no more than a disagreement with the outcome of the appeal. The two grounds of appeal which he considered had arguable merit were that the Tribunal had failed to consider the Article 8 provisions now included in the Immigration Rules, and that in that respect, the determination was incomplete. Permission to appeal was granted on that basis.

8. At the hearing, I asked Mr McGirr why the Secretary of State considered that the error in failing to consider Article 8 within the Rules would have materially affected the outcome of the appeal. He agreed that it would not do so since the amended Rules would not have resulted in the claimant's appeal being allowed within the Rules. He argued that the failure to deal with Article 8 within the Rules meant that the First-tier Tribunal Judge's proportionality assessment might have been incorrect. He accepted, however, that the proportionality balance was in the claimant's failure by reason of his age and health problems.
9. I indicated at the hearing that I did not consider there to be any material error of law in the determination and that I would uphold the First-tier Tribunal decision.

**Conclusions:**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision.

**Consequential Directions**

Forthwith on receipt of this decision the respondent shall grant the appellant leave to remain for such period as is necessary to give effect to this determination.

**Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Date: 18 September 2013

Signed:

Judith Gleeson  
Judge of the Upper Tribunal