IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01973/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12 October 2015

Decision & Reasons Promulgated
On 28 October 2015

Before

UPPER TRIBUNAL JUDGE WARR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ISMAIL MOHAMED OLOL
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Mr R Layne of Counsel instructed by Portway Solicitors

DECISION AND REASONS

1. This is the appeal of the Secretary of State but I will refer to the appellant, a citizen of Somalia born on 25 June 1987, as the appellant herein.

2. The Secretary of State appeals the determination of a First-tier Judge who allowed the appellant's appeal against the respondent's decision on 28 August 2014 to refuse to revoke a deportation order made against the appellant on 22 April 2008. This followed a request by the applicant on 12 February 2009. The deportation order followed the appellant's conviction

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in July 2005 of robbery for which he was sentenced to two years' imprisonment.

3. The judge heard oral evidence from the appellant and his mother. The judge also heard from a friend of the appellant who had been convicted on the same occasion for the robbery. He apparently had been given indefinite leave to remain after a successful challenge to the decision to deport him

4. The judge summarises the submissions made before him. The respondent's representative relied on the refusal letter and submitted, with reference to paragraph 399A of the Immigration Rules, that the appellant had not culturally integrated into the United Kingdom to such an extent that he could not be deported. The fact that he had not reoffended since the burglary offence could only be a minor consideration. The appellant could be returned to Somaliland. Reference was made to the country guidance case **MOJ [2014] UKUT 00442 (IAC)**.

5. The appellant's representative (not Mr Layne) relied on her skeleton argument and it was apparently her main point that paragraph 391 of the Immigration Rules had not been raised by the respondent and was therefore not an issue before the Tribunal. The First-tier Judge however took the view that it was an issue because it formed the core of the decision made by the Secretary of State. In addition she focused on human rights issues and paragraph 399A which considered "the essential elements of length of residence and obstacles to returning and reintegration".

6. The determination concludes as follows:

> "15. The Tribunal notes the contents of paragraph 398 of the Rules which states 'where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than four years but at least twelve months; the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A."
>
> 16. Paragraph 399A of the Rules states:
>
> "(a) the person has been lawfully resident in the UK for most of his life; and
>
> (b) he is socially and culturally integrated in the UK and
>
> (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported."
>
> 17. The Tribunal notes that there has been considerable passage of time since the deportation was made and that during this period of time the

appellant has shown that he has not reoffended and he has also further integrated into life in this country. The country to which the appellant could be returned to the Tribunal accepts as being Somalia and that there is no evidence before the Tribunal to suggest that he could be returned elsewhere such as Somaliland. The appellant has not however been in Somalia for a variety of reasons since the age of 1, the Tribunal notes paragraphs 70 to 74 of the case of **Maslov [2009] INLR 47** and it is accepted by the Tribunal that the appellant is a young man who has yet to form his own family life in this country. He is living and dependent on his mother who was present at the hearing and who also gave evidence on his behalf. The Tribunal therefore take the view that the **Maslov** criteria do apply to this case. The appellant pleaded guilty at his hearing in respect of the offence and this shows a certain amount of remorse and acceptance of his role. He has done all that has been asked of him in relation to rehabilitation and the Tribunal has taken this into consideration positively on the appellant's behalf. In **Maslov** the court was mindful of circumstances such as these which are before the Tribunal in the present case, in that where a person has spent all or the major part of his or her childhood and youth in the UK then there needs to be very serious reasons for there to be a justifiable expulsion. The Tribunal accepts the submissions of Ms Ofei-Kwatia in that the appellant has turned his life around and that he has shown that his circumstances in this country are such that he has fully integrated and that it would be difficult for him if he were to be returned to Somalia.

18. The Tribunal accepts that the Appellant has little knowledge of Somalia since he left there at the age of 1 and also that he has no known relatives to him who could help him in his reintegration back into life into that country. For this very good reason the Tribunal is of the view that the deportation order under paragraph 391 of the Rules should not stand in light of the present circumstances and the factual matrix which has been presented to the Tribunal. Furthermore the Tribunal is also of the view that the appellant's claim under paragraph 399A has also been established in that he has spent the most and significant part of his life in this country where he has socially and culturally integrated in this country. The Tribunal accepts the evidence of his mother and also of his friend in this respect. The Tribunal accepts that he is a person who would find it difficult to adjust to circumstances in Somalia. Therefore, there would be very significant obstacles to his integration into the country for which he is proposed to be deported.

19. The Tribunal also accepts the submissions of the appellant where they rely on the case of **MOJ and Others (Return to Mogadishu) [2014] UKUT 00442 (IAC)** where it is said that if it is accepted that the person facing a return to Mogadishu after a period of absence and there is no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. The Tribunal finds that in this particular case the appellant because of the significant lapse in time since he was in that country would find it difficult to reintegrate back into his clan and resettling in that country. The appellant would find it difficult to obtain clan support due to the fact that he was last in that country when he was aged 1.

> 20. For all of these reasons the appellant's appeal is allowed under paragraph 399A of the Rules. The Tribunal has also found that it would be in the public interest for the appellant not to be deported and this is in light of consideration of Section 117 of the Immigration Act 2014."

7. The respondent applied for permission to appeal and permission was granted on 30 March 2015 by First-tier Tribunal Judge Pooler. Judge Pooler found that it was arguable that the judge had failed to give adequate reasons for allowing the appeal by reference to the Immigration Rules or in respect of Section 117B of the 2002 Act. It was arguable that he had failed to give adequate reasons for finding that the appellant had socially and culturally integrated into the UK and had misdirected himself when considering whether there were any very significant obstacles to integration into Somalia. Permission was given to argue all grounds. As a preliminary matter, Mr Avery, having been given the opportunity of taking instructions, acknowledged that the respondent had erred in referring to paragraph 391 in the refusal letter. This was because the appellant had not been removed from the UK as Mr Layne pointed out. I offered Mr Avery the opportunity of an adjournment to consider the matter further but he submitted the error was not material in the circumstances of this case.

8. As a matter of general concern, Mr Avery submitted that the determination was extremely short and while brevity was to be applauded the grounds had raised concerns with the judge's decision. There had been no reference to the actual offence or immigration history. There had been no careful assessment of all the relevant circumstances. The judge had not given adequate reasons for finding the appellant to be socially and culturally integrated in referring to the appellant's difficulty in adjusting to circumstances in Somalia the judge had misdirected himself in failing to refer to very significant obstacles.

9. The judge had erred in paragraph 20 in his reference to Section 117. It was not clear what he was trying to say.

10. The judge's reasoning was very scanty in paragraph 18. The appellant was 28 and although close to her mother could be expected to look after himself and exercise the internal relocation option.

11. Mr Layne submitted that the judge had referred to the appellant's skeleton argument which had set out the immigration and criminal history.

12. In relation to Section 117C the relevant Immigration Rules were in all material respects identical and the judge had set them out in the determination at paragraph 16.

13. The judge had heard evidence from the appellant's mother and the appellant's friend and it was open to him to accept that evidence as he had done in paragraph 18 of the decision. The appellant had left Somalia at the age of 1. He had lived in a camp for five years and then had come to the UK when he was aged 6. The judge had applied the criteria in

Maslov and he pointed out that the respondent had not taken issue with the applicability of the **Maslov** criteria in the grounds or in oral argument.

14. The judge had found that the appellant had no family to return to or to help with integration. The family were refugees in the UK.

15. It had been open to the judge to accept that the appellant had expressed some remorse by virtue of his plea of guilty.

16. The appellant had had the deportation order hanging over him for many years. His co-defendant's deportation order had been set aside.

17. In reply Mr Avery submitted that the judge should have referred to the respondent's bundle rather than the skeleton argument and should have set out the statute correctly. Reference should be made to the Rules rather than **Maslov**. Paragraph 3 of the grant of permission by Judge Pooler identified the main concerns.

18. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the judge's decision if it was materially flawed in law.

19. Dealing with the factual issues, the judge heard oral evidence from the appellant and his mother and a friend of the appellant. The witnesses were cross-examined. It is plain from the decision that the judge essentially accepted what he had been told as appears from paragraph 18 of the decision.

20. The judge also sets out the competing submissions of the parties and it was submitted, for example, that the appellant had not culturally integrated – the judge was referred to paragraph 399A. The appellant's representatives relied on paragraph 399A as well. It is unsurprising in these circumstances that the judge identifies paragraph 399A of the Rules as a principal feature of the representations before him. The judge is criticised for only referring to Section 117 at the conclusion of the determination but his reference to paragraph 398 in paragraph 15 of the decision makes it abundantly clear that he was well aware that the deportation of the appellant was conducive to the public good and in the public interest in the light of the offence for which he had been convicted. While it is possible that the determination could have been structured differently I am not satisfied that the judge materially misdirected himself in the circumstances of this case.

21. In this context it is perhaps apposite to note a submission by Counsel then appearing for the appellant in relation to paragraph 391. The judge considered that paragraph 391 formed the core of the decision made by the respondent and therefore was an issue before him. It is understandable that the judge identified the issue as a core issue raised by the respondent since it features heavily on the first two pages of the respondent's decision. Unhappily, as Mr Avery conceded, the respondent

appears to have been in error in referring to paragraph 391 and no doubt this did not render the judge's task any easier.

22. Among the points taken by the respondent was that the judge had applied the wrong burden of proof but it appears from paragraph 8 of the decision that the judge had directed himself correctly that it was the appellant who bore the burden of proof.

23. The grounds take issue with the judge's reference to the appellant's remorse. This appears to me to be no more than an expression of disagreement with what the judge said in paragraph 17 of the decision. The sentencing judge certainly accepted the guilty pleas by the appellant and his co-defendants as an expression of remorse for the purposes of sentencing them.

24. The reference by the judge to difficulties in adjusting to circumstances in Somalia which is the subject of criticism in ground 4 of the respondent's initial grounds is again in my view no more than an expression of disagreement with the judge's decision and he was plainly looking at the test in the Rules when the determination is read as a whole. Adequate reasons have been given for finding that the appellant is socially and culturally integrated and I do not consider that the judge gave weight to immaterial matters or otherwise misdirected himself as suggested in the grounds.

25. The grounds feature a reasons challenge and Mr Avery started his submissions by referring to the brevity of the decision. It could perhaps have been expanded a little and reference could have been made to the appellant's conviction. However the determination does set out, albeit in a short compass, the salient points and the determination is adequately reasoned. Brevity is not to be discouraged.

26. I am not satisfied that the grounds as summarised by Judge Pooler or as argued by Mr Avery demonstrate a material error of law on the part of the First-tier Judge.

27. For the reasons I have given, the appeal of the Secretary of State is refused. The decision of the First-tier Judge stands.

28. There was no anonymity direction in this case and I make none.

Fee Award

No fee is paid or payable and therefore there can be no fee award.

Signed Date 15 October 2015

Upper Tribunal Judge Warr