



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/04935/2015

**THE IMMIGRATION ACTS**

**Heard and decided at Field House 6 July  
2016  
Corrected transcript signed 12 July**

**Decision &  
Promulgated  
On 13 July 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE  
John FREEMAN**

**Between  
[ M A ]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

respondent

**Representation:**

For the appellant: *Gemma Loughran* (counsel instructed by Sutovic & Hartigan)

For the respondent: Miss Julie Isherwood

**DECISION AND REASONS**

This is an appeal by a citizen of Somalia, who conventionally gives his date of birth as [ ] 1978, against a decision of Judge Mohammed Asif Khan, sitting at Hatton Cross on 4 April 2016, dismissing his appeal against refusal of asylum. The grounds challenge the judge's asylum decision on various points. The point on which permission was given concerns the judge's failure to deal with a country expert report which was put before him; but it seemed to me, and neither side dissented when I put it to them, that, before that point was considered, those relating to the appellant's personal credibility needed to be dealt with.

2. The judge's credibility findings appear at paragraphs 36 to 39 of his decision. At paragraph 36 the judge sums up the appellant's case as follows

"He fears return to Somalia because Al Shabaab threatened him due to the fact that he sold goods from his shop to the government forces. Al Shabaab man came to his shop and told him that he was an enemy of God. His family had been displaced and he states that his mother and wife were killed. The appellant's father and siblings are still in Somalia he has been in contact with his father. He fears returning to Somalia as Al Shabaab will find him and kill him."

3. That is a very basic summary of the appellant's case; but it was set out at considerably greater length in a witness statement before the judge, signed 13 August 2015. Looking at that statement (paragraph 21), the appellant's dealings with Al Shabaab began on 28 December 2013, when two masked men from that organisation came and told the appellant and his cousin that they must not sell goods from the shop they ran to government troops. They were given no opportunity to object to that, and it was made clear to them their only alternative was simply to close the shop. However the shop formed the appellant and his cousin's only source of income; so, despite the obvious risks, they went on doing business as before.

4. Going on to paragraph 23 of the statement the appellant said this.

"On 3 January 2014 an Al Shabaab member came to the shop and said that now we know you are our enemies. We knew that he was a member of Al Shabaab because he used the phrase 'enemy of God' which is the phrase that they use to describe people who they consider to be against them. This was mid-afternoon. We did not get the chance to say anything to him he just said this and walked out. In the shop at the time there were just a few other people. The Al Shabaab person came to the window and spoke so that no one else noticed."

5. The appellant and his cousin agreed to discuss later whether they should close the shop or not. However as can be seen from the appellant's paragraph 24, they were just re-opening it later that day, after evening prayer, when two masked men appeared. One drew a pistol and shot the appellant's cousin in the face, killing him instantly, at which point the appellant fled.

6. There was then a further incident very much later when the appellant was already in this country which is dealt with in the appellant's statement at paragraph 39 where he refers to something that happened in November 2014. A man called [AM], who he had met in this country, and who had since been back to Somalia, received a call from the appellant's father. [AM] arranged to ring back, so that the appellant could speak to his father himself.

7. The appellant's father told him that, after he had fled, people would come looking for him and, when it was explained he was not there, someone had thrown a bomb into the family house, killing the appellant's mother and

injuring his father. The appellant's father was calling from hospital, and told him it was not safe to communicate with him again and he would not call again. The appellant describes this news as devastating for him.

8. Whether those further details of the appellant's case were true or not, it is quite clear that the judge needed to deal with them. So far as the points which the judge did deal with are concerned he rejected the appellant's evidence about the second visit of Al Shabaab on 3 January 2014 on the basis that "On the one hand he stated that the man came to the shop. He then stated that the man told him that he was an enemy of God from outside the shop window." While there is nothing apparently inconsistent in the appellant's version, so stated, it is fairly clear that what the judge was referring to was an apparent discrepancy between the appellant's evidence at interview, and what he said before the judge, to the effect that this conversation had taken place through the shop window.
9. The discrepancy arose in this way as a result of the passage from the witness statement (see 4) at paragraph 23. The original version of that statement has the appellant saying "On 3 January 2014 one of them came to the shop" and relates the conversation and goes on "he just said this and walked out." However in the consolidated witness statement which I read out, the appellant's evidence about that passage begins in that way; but it goes on "In the shop at that time were just a few other people. The Al Shabaab person came to the window and spoke so that no one else noticed."
10. It is quite clear, certainly for a native English-speaker, and probably for anyone else, that the expression 'walked out' means that the person concerned had been inside the shop, rather than talking through the window. However, dealing with the final version of the appellant's witness statement, he is still using that expression, but making it clear that, on that occasion, the man from Al Shabaab came to the window; so, even on the most favourable reading of the judge's findings at paragraph 37, it does not seem to me that the final version of the appellant's evidence supported them. If what the appellant had said in his original statement were to be relied on, then that would have needed to be brought up at the hearing.
11. The judge went on at paragraph 38 to say this  
"The appellant stated that his mother was killed and he attended her funeral which was held in an area held by Al Shabaab. He said that he had not come to any harm because his maternal uncle took him there and then brought him back. I find that once the appellant had closed the shop due to the threats from Al Shabaab then what would be the reason left for Al Shabaab to still cause him any harm. The cause for the threats is no longer there. I therefore do not accept the appellant's claim that Al Shabaab are still interested in him."

It seems to me that, dealing with further risk from Al Shabaab, that is a conclusion to which, other things being equal, the judge was entitled to come.

12. The only way in which Miss Loughran was able to suggest that this conclusion was the basis for the judge's general credibility findings comes from the judge's paragraph 41, which he began "For all the above mentioned reasons I do not find the appellant to be a credible or a consistent witness." It does not seem to me that that can fairly be read as making what the judge said at paragraph 38 into one of his reasons for rejecting the appellant's evidence about the threats made on 3 January.
13. However the judge then went on at paragraph 39 to deal with the appellant's evidence, coincidentally also at paragraph 39 of the supplementary statement, about the telephone call from his father. The judge rejected that evidence on this basis "I do not find that the appellant's evidence credible or consistent that having established contact with his father he has not managed to maintain it." It does not seem to me that that was a conclusion to which the judge was entitled to come, without dealing with the appellant's clear evidence in his final witness statement to the effect that his father had told him in terms not to communicate with him, because it was not safe; so that credibility finding cannot stand either, and the judge's treatment of the news the appellant said he had had from his father cannot be upheld.
14. Besides that, there is the point about the judge not dealing at all with the shooting of the appellant's cousin, which is a further reason for setting aside his decision. Clearly there will have to be a re-hearing, which will take place in the First-tier Tribunal before a different judge.

**Appeal allowed: first-tier decision set aside**  
**Fresh hearing in First-tier Tribunal, not before Judge MA Khan**

A handwritten signature in black ink, appearing to be 'JL Khan', written in a cursive style.

(a judge of the Upper Tribunal)  
13 July 2016