



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

Appeal Number: AA/05317/2014

THE IMMIGRATION ACTS

**Heard at North Shields
On 16 December 2015**

**Decision & Reasons Promulgated
On 7 January 2016**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**MM
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Tetty, Counsel
For the SSHD: Ms Parkinson, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant because this decision refers to his asylum claim.

Summary of asylum claim

2. The appellant is a citizen of Somalia who claimed asylum after arriving clandestinely in the United Kingdom ('UK') on 20 October 2013. The appellant contends that he has a well-founded fear of persecution in Somalia for reasons relating to his past ill treatment by [AI] Shabab and his lack of protection for reasons relating to his claimed membership of the Tumul clan.

Procedural history

3. In a decision dated 24 November 2014 FTT Judge Hands dismissed the appellant's appeal. She rejected his claimed clan membership and indeed the entirety of his account in Somalia.
4. In a decision dated 5 January 2015 FTT Judge White granted permission to appeal observing that the judge arguably failed to give proper weight to the country and medical expert evidence adduced by the appellant.
5. The SSHD has submitted a rule 24 notice dated 9 January 2015 in which it was argued that the expert evidence was considered in the round and the FTT was entitled to reach the credibility findings for the reasons provided.

Hearing

6. Mr Tetty relied upon the grounds of appeal and focussed upon the FTT's failure to engage with the expert evidence. Mr Parkinson relied on the rule 24 notice and invited me to find that the FTT was entitled to make the factual findings for the reasons provided, having adequately considered the expert evidence.
7. After hearing submissions I reserved my decision, which I now provide with reasons.
8. Both representatives agreed that should I find the FTT committed the alleged errors of law the most appropriate approach is for the findings to be remade completely and that given the nature and extent of those findings, this should be done in the FTT.

Discussion

9. The FTT has failed give adequate reasons for rejecting an important aspect of Dr Lord's medical report. This report dealt with two important aspects. First, it describes the wounds caused by the appellant being shot. Second, at paras 40 and 41 he describes in some detail the scars caused by burning and makes it plain that "*there are so many in so many different parts of the body that they could not be regarded as accidental*". He then concludes that "*the majority of many scars all over his body are diagnostic of torture*" [48]. The FTT has rejected this evidence for two reasons. First, it is said that the medical report is

based upon the appellant's account [28]. That is simply wrong. This aspect of the report is based upon Dr Lord's own analysis of the physical presentation of the scars. Second, the scars could have been caused during the course of his work as a blacksmith, which involves working with hot metal. This fails to take into account Dr Lord's clearly expressed view that the scars could not be regarded as accidental. I am satisfied that the FTT has irrationally failed to take relevant matters into account when considering Dr Lord's report.

10. The country expert, Mr Mullen interviewed the appellant regarding his claim to be a member of the Tumul clan. He considered the appellant to be explicit in explaining the characteristics of alienations experienced by the clan as well as its specialisms. He provided detailed reasons to support that conclusion. The FTT did not impugn Mr Mullen's expertise and noted he provided evidence in the country guidance case on Somalia. Of course the FTT was not obliged to accept this as determinative of the appellant's clan membership. This evidence is however very important and the FTT was obliged to consider it in the round with all the other evidence including the appellant's lack of knowledge within the asylum interview. The FTT did not conduct this analysis or carefully scrutinise the evidence relevant to the appellant's knowledge and was content to effectively find that little or no weight can be attached to Mr Mullen's expert view because it was based upon the appellant "*having told the truth*" when he has "*displayed a propensity to say whatever suits*" [27]. The FTT has failed to take into account that Mr Mullen was not testing truth but knowledge. Mr Parkinson submitted that such knowledge might have been deliberately learnt but that was not a reason offered by the FTT. In failing to carefully scrutinise the evidence available as to the appellant's knowledge of the Tulan and Mr Mullen's expert view upon this, the FTT has irrationally failed to take material evidence into account.
11. These errors of law are material and go to the heart of the appellant's claim and lead me to the view that the FTT's decision should be set aside.
12. MOJ and others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 makes it clear that the withdrawal of Al Shabab from Mogadishu is complete and that the significance of clan membership has changed. Clans now provide potentially social support mechanisms and assist with access to livelihoods. The headnote then says this at (ix):

"If it is accepted that a person facing a return to Mogadishu after a period of absence has 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. These considerations will include, but are not limited to:

 - circumstances in Mogadishu before departure;
 - length of absence from Mogadishu;
 - family or clan associations to call upon in Mogadishu;

access to financial resources;
prospects of securing a livelihood, whether that be employment or self employment;
availability of remittances from abroad;
means of support during the time spent in the United Kingdom;
why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.”

13. The FTT has made no clear findings on the availability of family or other support for this appellant if returned to Somalia. This is key to the assessment of prospective risk. The FTT has wrongly focused upon the risk from Al Shabab upon return [25]. Whilst the appellant’s claim to have been mistreated by Al Shabab in the past is relevant in assisting a finding to be made regarding his clan (because he claims he was targeted for reasons relating to his clan membership) it is of less relevance to risk on return in light of the country guidance. When the FTT remakes the decision attention needs to be focused upon MOJ and the changed landscape to assist an accurate determination of asylum claims from Somalia.

Remittal

14. The decision must be remade entirely and *de novo*. I have had regard to paragraph 7.2 of the relevant Senior President’s Practice Statement and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT.

Decision

15. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside.
16. The appeal shall be remade by FTT *de novo*.

Directions

- (1) The appeal shall be reheard *de novo* by the First-tier Tribunal sitting in North Shields (TE: 2.5hrs) on the first date available. Somalia interpreter necessary.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
18 December 2015