IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05495/2015

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 12th February 2016	**On 12th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ABDIRAHMAN YUSUF HUSSEIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Alison Pickup (Counsel)
For the Respondent: Mr David Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Row, promulgated at Birmingham Sheldon Court on 7th July 2015. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Somalia, who was born on 1st January 1958. He appeals against the decision of the Respondent Secretary of State, dated 13th March 2015 to refuse his application for asylum and for humanitarian protection.

The Appellant's Claim

3. The Appellant's claim is that he fears persecution on grounds of his race as a member of a minority clan in Somalia and that there is also a real risk of serious harm which he would face if returned to Somalia because he is a member of the Ashraf minority clan which has been persecuted since the outbreak of the civil war in 1992. The Appellant's claim is that he fled Mogadishu with his wife and three sons after their home was hit by mortar shell during fighting between militia. Subsequently, in June 2008, Al Shabaab militants captured Ferfer where he had been living and he was abducted and held in captivity for three weeks and severely beaten. His wife and children had gone missing. In August 2011, he was contacted by his daughter, Miss Yusuf, who was living in the United Kingdom and had been put in touch with him by a member of the Somali community, who had seen the Appellant in Kampala and had met the Appellant's cousin, Mr Ibrahim, who had adopted that daughter.

The Judge's Findings

4. The judge did not find the Appellant and his daughter in the UK to be at all credible. He ruled that in matters concerning the Appellant's immigration status and his family and financial connections, it was not possible to rely upon anything that either of them said (see paragraph 57). The judge held that the Appellant had told deliberate lies in his evidence (see paragraph 53). As for the Appellant's membership of the Ashraf clan, the guidance given officially was that clan structure was not something which would either advantage or disadvantage a person returning to Mogadishu (see paragraph 64). In fact, an ordinary civilian, who is not associated with security forces, is not at real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR. The Appellant's claim under Article 8 was also dismissed (see paragraphs 82 to 85).

Grounds of Application

5. The grounds of application state that the judge failed to take into account the Appellant's membership of a minority clan in his assessment of the risks to which the Appellant would be subjected if he returned to Somalia. Furthermore the case of **MOJ and Others (Somalia) [2014] UKUT 00442** had not been faithfully applied.

6. On 29th September 2015, permission to appeal was granted by the Upper Tribunal on the basis that it was entirely arguable that the judge failed to consider the significance of the Appellant's clan membership (see paragraph 64) which was contrary to the findings in **MOJ** that clan membership is still a relevant factor in the assessment of risk on return. Secondly, it was also arguable that the Appellant would have financial assistance from his daughter was a finding that was not open to

the judge because the judge failed to take into account relevant considerations in coming to this conclusion.

7. On 5th November 2015, a Rule 24 response was entered to the effect that the judge had adequately considered all these and had given adequate reasons.

Submissions

8. At the hearing before me on 12th February 2016, Ms Alison Pickup, appearing on behalf of the Appellant, handed up a copy of the **MOJ** case and directed my attention to paragraph 337 of the determination and paragraph 339 which made it clear that clan membership was not without significance in matters of protection. My attention was also drawn to paragraph 407 and 408. Ms Pickup submitted that the Appellant was a member of a minority clan and he had no financial support any longer. Therefore, the following four issues were relevant. First, there was an absence of nuclear family or close relatives available to him. Second, in the absence of the nuclear family there was no clan support. Third, there was an absence of the availability of financial resources to him. Fourth, there was the issue about his ability to secure a livelihood, with no close relatives, and no meaningful clan connection if he were to be returned.

9. Ms Pickup then proceeded to develop two of these points in some detail. First, as far as clan membership was concerned she drew my attention to paragraph 64 and paragraph 63, with the former containing a statement that clan membership was not something that either excluded or included an advantage or disadvantage either way with respect to a member of the Ashraf tribe. With respect to the latter, the judge observes at paragraph 63 that there is no reason to suppose that an educated man would not get a job without requiring the assistance of his clan. Second, Ms Pickup drew my attention to the financial ability of the Appellant's daughter to support him. The daughter's evidence had been that she was sending the Appellant 100 dollars per month. However, this was earlier. Her circumstances in the UK had changed. The judge had no basis for concluding that there was no difference now in her financial circumstances to what was previously the case. From 2013 when she was granted entry clearance to come, she had £750 income and £300 expenses. Previously she was a young single woman with no financial obligations. However, of late she had since October 2013 given birth to her daughter and her total income from state benefits was £620, and she was living in council accommodation, and had bills to pay, and was in no position to actually support her father as she previously did. When the judge concluded at paragraph 74 that the Appellant's daughter could call upon relatives, this was a conclusion without any evidential basis. The judge was simply wrong to conclude (at paragraphs 67 to 68) that the daughter's circumstances were not "greatly different out of work than they were when she was working" because she now had a child of her own, and she was supporting two people on £620, whereas her previous earnings of £750 were used just to support herself.

10. As far as Article 8 was concerned the judge had erred again because he found at paragraph 85 that, "Any family life that exists between them is limited if it exists at

all". The judge simply has not resolved the issue as to whether or not family life existed. The only reason why the Appellant had been separated from his daughter between 2000 and 2011 was on account of the shelling of their family home in Mogadishu during the civil war there. If they were living apart presently (see paragraphs 82 to 83) this was because of the financial reasons following the daughter's inability to work given the birth of her child. Moreover, the Appellant had relied on remittances from his daughter while living in Uganda between 2011 and 2013. It was wrong for the judge to conclude that there were no "Special ... emotional or other bond other than that that is normal between a father and his adult daughter" (see paragraph 84). Finally, the judge concluded that any interference in the Appellant's private and family life in the UK was outweighed by the public interest and is proportionate to the legitimate aim of immigration control. However, this did not take into account the fact that the Appellant's return to Somalia would effectively rupture his relationship with his daughter because she was the primary carer of a British citizen child and she would not be returning to Somalia with the Appellant.

11. For his part, Mr Mills submitted that the starting point had to be that the Appellant came to the UK with entry clearance in order to undertake a job. He was educated enough to do that. The suggestion that he would not be able to get employment upon return to Somalia was therefore simply implausible. The judge recognised (at paragraph 58) that the Appellant was educated and had been a school inspector and he was more than able to get a job. The judge gave proper consideration to the Appellant's circumstances (see paragraph 62). This left the question about the relevance of clan membership. It is true that the judge does not factor in clan membership. He states (at paragraph 64) that clan membership would neither advantage nor disadvantage the Appellant. However, the country guidance case of **MOJ** is entirely consistent with this observation. This is because some traits are dominated by clan affiliations but other traits are not. The case of **MOJ** makes it clear (at paragraph 352) that there is no discrimination on the basis of clan membership, but clan membership may separately assist a person.

12. Second, as far as the issue of remittances was concerned by the daughter, it was open to the judge to say that nothing had changed, because what the judge was referring to was not the fact that the Appellant's daughter was in receipt of state benefits and was therefore a needy person, but was referring to the fact that her position was no different because she still receives about the same amount of income, and in circumstances where the Appellant would be able to find employment, the support that the daughter would provide would not have to be significant.

13. Third, and in any event, the judge was firm in its conclusion that the two of them were unreliable witnesses. This therefore made any error on his part an immaterial error given that the witnesses' evidence could not be relied upon.

14. Fourth, as far as Article 8 was concerned the judge was right to conclude as he did because he had already taken the view that the Appellant would be in employment upon return to Somalia. Moreover, the judge concluded (at paragraphs 84 to 85) that

there was no family life engaging Article 8, and the judge was correct in this conclusion because the Appellant and his daughter were living separate lives in the UK. Therefore, what one was left with was simply the "private life" and under Section 117B this had always been "precarious" given the Appellant's status. Therefore, the Appellant could not succeed under his "private life" rights either.

15. In reply Ms Pickup submitted that one could not realistically maintain that the judge's conclusion (at paragraph 64) that the guidance given in **MOJ** is that the clan structure is not something which would either advantage or disadvantage a person, was without any significance to the outcome of the decision. This is because **MOJ** makes it quite clear that access to employment is dependent upon clan membership or financial support. The issue before this Tribunal was that of "materiality" and plainly such a conclusion was material to the outcome of the case which could not be substantiated. Second, paragraph 340 of **MOJ** makes it quite clear that if one is less likely to get a job because of a lack of clan affiliation then this is tantamount to discrimination. **MOJ** makes it clear that job access depends upon a nuclear family and having clan membership. The Appellant was a member of the Ashraf minority clan and the objective evidence was clear that he would face discrimination.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

17. First, this is a case where the judge has not found the Appellant and his daughter to be at all credible. The Appellant, on the other hand, as Mr Mills has submitted, entered the UK in order to take employment. He is not simply an ordinary civilian from Somalia. He is highly educated and was, as the judge himself found, a person who held "important jobs in Somalia. He was a head teacher at two schools. He was a school inspector" (paragraph 58). The statement by the judge at paragraph 64 that clan structure is not something which would either advantage or disadvantage a person returning to Mogadishu is broadly correct if one looks at the general tenors of the judgment in **MOJ**.

18. In that country guidance case, it is made clear that in Mogadishu, "There is no inter clan violence taking place and no real risk of serious discriminatory treatment being experienced on the basis of clan" (see paragraph 337). The determination does add that, "That is not to say that clan membership has no significance to those living in Mogadishu" (paragraph 339). The nub of the decision in **MOJ** is that an ordinary civilian will face no risk of ill-treatment or harm upon return to Mogadishu. However, a person who returns to Mogadishu could after a period of absence look to his nuclear family (see paragraph 407(f)).

19. What is significant about this country guidance case is the reference to the fact that there is now "The issue of the emerging importance of the nuclear family rather than clan membership alone" (see paragraph 83). In this regard the evidence before the **MOJ** from the UNHCR was that "The clan dynamics in combination with other

factors are an important element when considering risk" and that "Newcomers would certainly attract adverse attention; including those originating from Mogadishu but have left a long time ago" (see paragraph 83).

20. However, all of this has to be read in the context of the decision in **MOJ** (at paragraph 407(h)) that in the absence of no nuclear family or close relatives there are eight considerations that may conjunctively be taken into account, and these include circumstances in Mogadishu before departure, availability of remittances from abroad (which the judge found the Appellant to be able to avail himself of on account of his daughter's situation), as well as why his ability to fund the journey to the west no longer enables an Appellant to secure financial support on return.

21. The Tribunal went on to say that given the improving economic situation in Mogadishu it would be up to the Appellant to show why he would "Not be able to access the economic opportunities that have been produced by the 'economic boom', especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away".

22. It is true that the Tribunal in **MOJ** also stated (at paragraph 408) that,

> "It will therefore, only be those with no clan or family support who will not been in receipt of remittances from abroad and have no real prospect of securing access to a livelihood on return who would face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms".

However, the judge did find the Appellant to be a person who would have access to a livelihood. Therefore, the decision reached by the judge was one that was entirely open to him on the facts of the case before him.

23. Second, there is the issue of Article 8 rights, but here the judge held that, "Any family left that exists between them is limited if it exists at all" (paragraph 85) and gave his reasons for so stating (at paragraphs 82 to 84). Moreover, Section 117B of the 2002 Act makes it clear that the Appellant's position was one that was "precarious", and therefore the judge was entitled to come to the decision that he did.

24. Accordingly, notwithstanding Ms Pickup's valiant efforts to persuade me otherwise, and the submissions that were delivered in a measured and careful way, I am not satisfied that the judge erred in reaching his decision for the reasons I have given.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Professor Satvinder Juss 29th April 2016