



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06652/2015

THE IMMIGRATION ACTS

Heard at: Manchester
On: 11th May 2016

Decision & Reasons Promulgated
On: 31st May 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MAHAMED ABDIQANI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Mynott, Broudie Jackson & Canter

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a male national of Somalia whose date of birth is recorded as the 1st January 1989. He has permission¹ to appeal against a determination of the First-tier Tribunal (Judge Pickup)² to dismiss his appeal against refusal of his protection claim.

¹ Permission was refused by First-tier Tribunal Judge RA Cox on the on the 28th August 2015 but granted upon renewed application by Upper Tribunal Judge Eshun on the 23rd September 2015.

² Determination promulgated 7th July 2015

2. The core facts of the Appellant's account were not challenged by the Respondent. It was accepted that the Appellant is from the Ashraf minority clan and that he was latterly living in Afgoye. Whilst living there he was from time to time approached by al-Shabaab recruiters but he always declined. In January 2012 he married a woman who had previously been married to an al-Shabaab commander. This commander decided that he wanted to remarry the woman in question and came and kidnapped her from her home. The Appellant went looking for his wife. During the search a group of men attacked and beat him. The Appellant was saved from death because there were other people around. The Appellant went into hiding and then after some time left Somalia with the assistance of an uncle who lives in Afgoye.
3. Having accepted those facts the Respondent declined to grant international protection. African Union forced liberated Afgoye in May 2012 and there is no indication that the Appellant is at risk today from members of al-Shabaab. He is a young man who is able to work and he could relocate without any undue hardship to another city in Somalia if he did not wish to return to Afgoye.

The Determination

4. On appeal the First-tier Tribunal concurred with the Respondent's analysis that there was no discernible risk to the Appellant in Afgoye today. The attempts to recruit him were casual and apparently noncommittal; there appeared to be no real interest in the Appellant himself, only his wife. Now that the commander had taken her, there was no reason to suppose that he would be interested in the Appellant. In any event, al-Shabaab had been driven out of Afgoye. The Tribunal then went on, apparently in the alternative, to consider whether the Appellant might reasonably be expected to relocate within Somalia. The Tribunal applied the extant country guidance: MOJ and Others (Return to Mogadishu) Somalia CG [2014] 00442 (IAC). It directed itself to the country guidance distilled at paragraph 407. It noted the findings that there are no clan militias in the city, no clan based violence, or even discriminatory treatment. The determination then sets out the Upper Tribunal's guidance on the reasonableness or otherwise of relocation to Mogadishu:

"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:

- i) circumstances in Mogadishu before departure*
- ii) length of absence from Mogadishu;*
- iii) family or clan associations to call upon in Mogadishu;*
- iv) access to financial resources;*

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

Put another way, it will be for the person facing return to Mogadishu to explain 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".

5. The determination notes that the Appellant has managed to come to the UK, an entirely strange country, and re-establish himself. On his own evidence he has managed to earn a living in the past by shining shoes. He is a healthy young man. The Tribunal does not accept the Appellant's evidence that he has completely lost touch with his family. His uncle was obviously a man of some wealth since he managed to shepherd the family from Mogadishu after the death of the Appellant's father, assist them in re-establishing themselves in Afgoye and when the Appellant faced his more recent problems, get him out. Judge Pickup noted the evidence in MOJ that the cost of arranging passage from Somalia to the UK can be as much as \$25,000. The Appellant has given no satisfactory explanation as to why he has lost contact with his family.

The Grounds and Response

6. Permission has been granted on the grounds that the Tribunal arguably erred in making speculative findings not based on the evidence. The Appellant had stated that he had lost touch with his family and since his credibility was not doubted by the Respondent there was no reason to reject this evidence. The grant of permission to appeal considers it arguable that the determination lacks any proper analysis of whether the Appellant would be at risk, given that he is a young man who had previously come to the attention of al-Shabaab.
7. Before me Dr Mynott expanded on the grounds of appeal as follows. It was submitted that the First-tier Tribunal has failed to consider the relevance of the Appellant's past interaction with al-Shabaab. For instance no consideration had been given to whether there was an "ongoing dispute" with the commander in Afgoye because of the Appellant's marriage to his wife; nor had the Tribunal considered whether the Appellant's interactions with would-be recruiters would re-occur, thus bringing him to the organisation's attention; nor had any attention been given to the evidence that in 2008 the Appellant's father was

murdered by al-Shabaab in Mogadishu for his opposition to the Islamic Courts. Dr Mynott submitted that it was not open to the Tribunal to find that there was nothing to suggest that al-Shabaab would be currently interested in the Appellant. The background facts indicated that there would be a number of reasons why they would be interested.

8. In respect of the position in Mogadishu, Dr Mynott submitted that the First-tier Tribunal was factually wrong to say that the Appellant had an extended family in Somalia who could help him, and who could supply the Appellant with financial resources. Dr Mynott took me to the note taken of the oral evidence by Ms Johnrose who was the Appellant's representative before the First-tier Tribunal. This records that at the opening of cross-examination the Appellant was asked about what family members he has in Somalia. He reports having one maternal uncle. In respect of how that uncle raised the funds to get him out of Somalia, the Appellant had told the Tribunal that his uncle had gone to friends and asked for help. People had rallied round and contributed to the fund to pay for the Appellant to get out. It was not therefore the case that the Appellant had a wealthy extended family who could assist him in relocating.
9. Mr McVeety opposed the appeal on all grounds. He submitted that the objective country background evidence should be my starting point. Al-Shabaab was driven out of Afgoye in 2012 by the African Union and the Upper Tribunal has held in MOJ that they have no presence in Mogadishu. There was a concrete finding that al-Shabaab had been driven out of the city and that this constituted a durable change. In respect of any alleged risk to the Appellant from residual fighters who had remained underground in either city, Mr McVeety submitted that the 'risk factors' identified by Dr Mynott in truth amounted to nothing. It could not sensibly be argued that the Appellant would be at risk because of his father's opposition to the Islamic Courts; he had lived after his father's murder for four years under al-Shabaab control in Afgoye and they had shown no adverse interest in him for this reason. As to the claim that the Appellant had been targeted for forcible recruitment in the past, and so would be again in the future Mr McVeety took me to the Appellant's own asylum interview where the Appellant described these approaches as follows. Asked there had been any previous incidents with al-Shabaab before his wife's kidnap the Appellant said [at 40] "...nothing it was not life threatening. They were pestering me to join them" and [at 41] "they gave me leaflets because I was in the market or asking directly because it would be very nice if you could join us, sooner you join us will be the better". In closing summary Mr McVeety submitted that if the First-tier Tribunal had given a paucity of reasons, had made speculative findings or had failed to conduct a complete risk assessment in respect of Mogadishu, on the facts as found none of this could be said to be material.

My Findings

10. Before me Dr Mynott essentially advanced two grounds. First, that the Tribunal failed to conduct a proper analysis of what might happen if the Appellant were to return to Afgoye. At paragraph 16 the determination gives three reasons why it found there to be no risk there: al-Shabaab were no longer in control of the city, the Appellant had remained there for 3-4 months after the claimed incident, and now that his wife has been captured, there would be no reason for al-Shabaab to target him. All of these are perfectly good reasons to find no current risk. Dr Mynott submitted that the Tribunal had failed to consider that the Appellant still regards himself as married to his wife; by his very presence he would be perceived to be a threat. The facts do not support that submission. Had al-Shabaab considered the Appellant to be a threat, they no doubt would have killed him or attempted to do so. The fact that the Appellant has left Somalia and made no further attempts to find his wife would indicate that he has no pressing imperative to do so. He appears to have accepted that he is powerless to do anything to save her, and on the facts that assessment is sadly almost certainly correct. As for the submission that he had previously come to the adverse interest of al-Shabaab recruiters, the extract from the asylum interview speaks for itself: it was no part of the Appellant's own evidence that he had faced persecution or any level of harassment above what he himself describes as "pestering".
11. The second ground centred on the findings on internal flight. As I note above there was found to be no risk in Afgoye so it is not altogether clear why the determination goes on to address the situation in Mogadishu. Nevertheless I am satisfied that there is no arguable error in the approach taken to the 'alternative' findings on internal relocation. The question of whether the Appellant would be financially supported by his uncle, or by the collective Ashraf community, is entirely moot. That is because he is a young and healthy man who has been able to work to support himself in the past. Applying MOJ it will be for the Appellant to explain why he would not be able to access the economic opportunities that have resulted from the economic boom in the capital. Even if Judge Pickup had accepted that the Appellant had lost contact with his uncle that burden had not been discharged.
12. Alternatively Dr Mynott attempted to extract an arguable risk from the accepted fact that the Appellant's father had been killed in Mogadishu in 2008. Whilst that history is no doubt painful for the Appellant it is not, given the findings in MOJ, something that is capable of founding a present day risk:

There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM.

Decisions

13. The determination of the First-tier Tribunal does not contain an error of law such that the decision should be set aside and it is upheld.
14. I was not asked to make a direction for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce
26th May 2015