



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

Appeal Number: PA/01618/2016

THE IMMIGRATION ACTS

**Heard at Newport (Columbus House) Decision & Reasons
On 27 June 2017 Promulgated
On 29 June 2017**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu instructed by Duncan Lewis Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Somalia who was born on [] 1994. He arrived in the United Kingdom on 8 August 2015 and claimed asylum.
3. The appellant claimed to be from the minority Begedi clan. He claimed that in February 2014 Al-Shabaab had come to his home in Degli and taken away his cousin whom they had accused of working with the government. Two days later, his cousin was killed. Thereafter, Al-Shabaab wanted the appellant to join them and they visited the appellant on three occasions. He was told they would return in two weeks and he would be taken for training. Shortly after, the appellant left Degli and went to Mogadishu.
4. Whilst in Mogadishu, in June 2014 the appellant received a telephone call on his mobile saying that Al-Shabaab were waiting for him to join them for training. If he did not they would take him by force. In July 2014, they again called the appellant threatening to kill him, like his cousin, if he did not join them. He had been living with his aunt and he moved to live with his mother.
5. In January 2015, the appellant met a boy from his home village at a mosque and the boy dialled a number on his telephone. The appellant ran away. He went to the police but they told the appellant that they could not protect him.
6. In February 2015, the appellant was approached by three boys whilst leaving school and told to go with them. They had a gun but the appellant managed to escape and ran into a shop. In March 2015, Al-Shabaab came to his home and he jumped through a window and escaped. They returned two weeks later and again the appellant escaped through a window.
7. In June 2015, the appellant left Somalia having received a text message saying that they were going to kill him.
8. On 4 February 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal

9. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 22 September 2016, Judge Burnett dismissed the appellant's appeal on all grounds.
10. The appellant sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal but, on 10 January 2017, the Upper Tribunal (UTJ Plimmer) granted the appellant permission to appeal.

11. On 10 February 2017, the Secretary of State filed a rule 24 response seeking to uphold the decision.

The Submissions

12. Mr Dieu, who represented the appellant, relied upon the four grounds set out in the detailed skeleton argument submitted by the appellant's legal representatives.
13. First, he submitted that the judge had failed to make any factual finding in respect of the appellant's claim that his cousin had been killed by Al-Shabaab and that was the basis upon which he had left his home area to live in Mogadishu and which underlay his claim that he had been wanted by Al-Shabaab in Mogadishu.
14. Secondly, Mr Dieu submitted that the judge had been wrong to doubt the appellant's credibility on the basis that he had attended a private school – which was beyond his family's means – when in fact his evidence was that he had attended English classes for three days a week for one and a half hours each day.
15. Thirdly, the judge had been wrong to find implausible aspects of the appellant's account that he had been sought by Al-Shabaab in Mogadishu and had managed to escape from them on two occasions in the absence of background evidence to support that assessment.
16. Fourthly, the judge had been wrong to conclude that the risk of being recruited by Al-Shabaab in Mogadishu was "extremely low and remote" when that was unsupported by the background evidence.
17. Mr Mills, who represented the Secretary of State, accepted that the judge had failed to make a finding in respect of the appellant's claim that his cousin had been killed by Al-Shabaab in his home area. However, he submitted that was not the issue; rather it was his safety and the reasonableness of him internally relocating to Mogadishu. He accepted, however, that a finding as to whether his cousin had been targeted in his home area as a teacher and, as the appellant claimed, government books had been found at his home, might be relevant to whether the appellant was at risk of being targeted in Mogadishu.
18. Secondly, Mr Mills submitted that whilst the judge may have slightly overstated the fact that the appellant had attended a "private school", he was not wrong in principle that the appellant had paid for education in Mogadishu.
19. Thirdly, Mr Mills accepted that reasons based upon plausibility must be viewed with caution in the light of the Court of Appeal's decision in HK v SSHD [2006] EWCA Civ 1037 which was a reminder of the need to be cautious about concluding that something that might not happen in the UK

would not necessarily mean that it could not happen in a different country or culture. Here, Mr Mills submitted that the judge had given rational reasons for finding the appellant's account to be implausible. It was open to the judge to conclude at para 44 that it was damaging of the appellant's claim that Al-Shabaab had gone to great lengths to recruit the appellant in Mogadishu when they could have more easily recruited others in areas they control. Further, it was open to the judge to find that given that the Al-Shabaab was, in the judge's words "a ruthless organisation", that it was implausible that he had managed to escape them twice.

20. Finally, Mr Mills submitted that the judge had taken into account at para 42 that there was some evidence that Al-Shabaab recruited in Mogadishu but that evidence was "equivocal". The position in MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) at para (vi) of the head note was that there was "no real risk of forced recruitment to Al-Shabaab for civilian citizens of Mogadishu, including for recent returns from the west".
21. Mr Mills submitted that it was properly open to the judge, therefore, to doubt the appellant's account and make an adverse credibility finding.

Discussion

22. It is accepted that the judge made no finding in relation to the appellant's claim that his brother had been targeted by Al-Shabaab in their home area because he was a teacher and government books were found at their home. As a result of which, it was the Appellant's claim, that his cousin was killed and Al-Shabaab thereafter sought to recruit the appellant in both his home area and Mogadishu. The entirety of the judge's reasoning relates to what the appellant claimed happened to him in Mogadishu.
23. The appellant's case was, however, that what happened to him in his home area was, in effect, a trigger as to why he left his home area and what happened to him in Mogadishu. The two were, in the appellant's claim, inextricably linked. By focusing upon only what happened to the appellant in Mogadishu, the judge failed to determine relevant factual matters in respect of what the appellant claimed led to him going to Mogadishu and being threatened there by Al-Shabaab. I accept Mr Dieu's submission that this was an error and fatally flawed the judge's ultimate adverse finding.
24. Its relevance can also be seen in relation to Mr Dieu's fourth ground. Whilst the decision in MOJ and Others, upon which Mr Mills placed reliance, dealt with the general risk of recruitment Al-Shabaab in Mogadishu - and concluded that there was no real risk - that was in the context of an individual who otherwise had no history, such as the appellant claimed, with Al-Shabaab and, in particular, claimed he had previously been threatened if he did not join the organisation. Whilst the judge recognised that there was some evidence of recruitment in Mogadishu (at para 42) he failed to put that evidence in the context of the appellant's claim (if he

accepted it) that Al-Shabaab had previously attempted to recruit him in his home area. If the judge had accepted that aspect of the appellant's account, it would be relevant to, and might have affected, the judge's finding on whether given that profile the appellant's account of being threatened in Mogadishu was true and whether, as a consequence, he was at risk on return.

25. Merely to state, consistently with MOJ and Others, that the risk of being recruited in Mogadishu was "extremely low" (see para 43) failed to place that evidence in the factual context which the appellant claimed (if the judge believed him). Of course, the judge made no finding in respect of that context and, therefore, failed properly to approach the evidence concerning the risk of recruitment of this particular appellant by Al-Shabaab in Mogadishu.
26. In the result, I am satisfied that these errors are of sufficient significance that the judge's adverse credibility and factual findings cannot stand. It is unnecessary, as a result, for me to express any view on grounds 2 and 3 relied upon by Mr Dieu.

Decision

27. For the above reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of a material error of law. That decision is set aside.
28. Both representatives invited me, if I found an error of law, to remit the appeal to the First-tier Tribunal for a rehearing.
29. Having regard to the nature and extent of the fact-finding involved and to para 7.2 of the Senior President's Practice Statement, I am satisfied that the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Burnett.

Signed

A Grubb
Judge of the Upper Tribunal

Date 28 June 2017