



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

Appeal Number: PA/03603/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23 November 2017**

**Decision & Reasons
Promulgated
On 27 November 2017**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AH

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms K Pal, Senior Home Office Presenting Officer
For the Respondent: Mr T Gaisford, counsel instructed by Wilson Solicitors LLP

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge SJ Clarke, promulgated on 2 August 2017. Permission to appeal was granted by Upper Tribunal Judge Kekic on 25 September 2017.

Anonymity

2. An anonymity direction was made previously, and is repeated below owing to the claimant's vulnerability.

Background

3. The respondent arrived in the United Kingdom, aged 17, during 1994. His asylum claim was unsuccessful but he was granted periods of exceptional leave to remain, the last of which expired in February 1999. The respondent also sought asylum in another identity during 1995 and was granted leave to remain until November 1999. He was granted indefinite leave to remain in his own identity during April 1999. From 2003 onwards, the respondent has received a series of criminal convictions. Most notably, he was sentenced to 4 years' imprisonment for robbery in 2006 and 3 years' imprisonment for the same offence in 2011.
4. The Secretary of State decided to deport the respondent on 3 August 2007. His appeal against that decision was dismissed on 1 November 2007. The deportation order was signed on 4 March 2008.
5. The respondent's application to have the deportation order revoked was refused on 17 November 2010. His appeal against that decision was allowed on Article 3 grounds and that decision was upheld by the Upper Tribunal on 30 January 2012. The Secretary of State revoked the respondent's ILR and granted six months' Discretionary Leave valid until 28 September 2014. The respondent applied, in time, for a further period of DL. On 28 April 2015, a decision to deport the respondent was made. Representations were made on the respondent's behalf relying on medical and protection grounds.
6. In refusing the respondent's protection and human rights claim, the Secretary of State certified that section 72(2) of the Nationality, Immigration and Asylum Act 2002 applied. In considering the protection claim, the Secretary of State acknowledged that respondent would not be able to travel between Mogadishu and Kismayo without risk and therefore consideration was given to his removal to Mogadishu, referring to MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442. The conclusion was that the respondent would be returning to Somalia as an 'ordinary citizen' and would not be at risk simply on account of having lived in Europe for a time. Notwithstanding the respondent's diagnosis of paranoid schizophrenia, the Secretary of State considered that he would be able to work in Somalia and receive mental health treatment while receiving assistance from his family in the United Kingdom as well as clan members in Mogadishu. It was not accepted that the respondent's deportation would breach his human rights. While no Article 8 claim was raised, the Secretary of State concluded that the respondent did not fall within the exceptions to deportation nor that there were any very compelling circumstances which outweighed the public interest in his deportation. In addition, the

outstanding application for DL was refused under paragraph 322(5) of the Rules, with no right of appeal.

The hearing before the First-tier Tribunal

7. The hearing before the First-tier Tribunal proceeded by way of submissions alone. The judge had expert evidence before her in the form of a recent and unchallenged psychiatric report from Professor Katona. The appeal was allowed on Article 3 grounds on the basis that the respondent's mental health was likely to deteriorate, that he was unable to support himself, that he had no family in Somalia or known clan members in Mogadishu and that there was no evidence that his family members in the United Kingdom would be able to remit money to him in Somalia. In the alternative, the judge allowed the appeal on Article 8 grounds for the same reasons.

The grounds of appeal

8. The grounds of appeal in support of the application argued that the judge failed to give reasons why the respondent could not expect to benefit from remittances from family and friends at least in the short term; that the judge failed to give clear reasons why the respondent would not be able to access relevant medical treatment, with the reasoning in Said [2016] EWCA Civ 442 being applicable to his situation and it was said that the judge failed to properly apply MOJ.
9. Permission to appeal was granted on the basis sought.
10. The respondent's Rule 24 response, received on 19 October 2017 argued that the judge's decision contained no material error of law and the respondent's grounds constituted little more than an attempt to reargue the case.

The hearing

11. Ms Pal submitted a copy of Said and Mr Gaisford submitted an expanded Rule 24 response as well as a copy of the judgment in FY (Somalia) [2017] EWCA Civ 1853.
12. In her brief submissions, Ms Pal reiterated what was said in the Secretary of State's grounds regarding the Article 3 findings of the First-tier Tribunal. She referred to a failure by the judge to consider country guidance as well as specific facts relating to the respondent's circumstances. She submitted that there were no reasons provided as to why there be a breach of Article 3 rights were the respondent to be removed to Somalia. The admitted challenges he would face could not possibly amount to such a breach. On Said Ms Pal relied on what was said at [18] of the judgment as to the need to show circumstances bringing the respondent within the scope of the cases of D and N. She argued that the claimant in Said suffered from

mental health issues and the Court found that he could receive commonplace medical treatment in Somalia. Furthermore, at [20] the Court considered that conditions in an IDP camp did not amount to an Article 3 breach. Ms Pal argued that the respondent's case was on all fours with Said, in that he has mental health conditions and is from a majority clan. She contended that the First-tier Tribunal did not make findings as to whether the respondent could access relevant medical treatment in Somalia, whether he could obtain clan support or whether his sister could send remittances. While it was accepted by the Secretary of State that the respondent had no family members in Somalia, it was not accepted that he would face death or suffering in Somalia.

13. After Ms Pal completed her submissions, I commented that the appeal had also been allowed on Article 8 grounds for the same reasons as it was allowed under Article 3 and that it appeared that there was no challenge to these findings. Mr Gaisford stated that was also his understanding. Ms Pal did not indicate otherwise.
14. In reply, Mr Gaisford, relying on FY, emphasised the Secretary of State's concession at [9] of that case that if a person ended up in an IDP camp there would be a real risk of a breach of their rights under Article 3. At [10] of the decision and reasons it was noted that the Secretary of State had no objections to the content of the medical evidence. On the contrary, he argued, at the hearing the Secretary of State's case had been put on the basis that Kismayo had improved and was safe for returnees, the judge's findings to the contrary were unchallenged.
15. Mr Gaisford argued that the case of FY and the respondent raised similar facts. At [24] the judge noted that the only person assisting the respondent in the United Kingdom was his sister who was in receipt of benefits and had three children. He contended that the judge was entitled to conclude that she was unlikely to be able to send remittances to the respondent in Somalia. With regard to clan support, Mr Gaisford maintained that the judge dealt with this matter but, in any event, the respondent's clan was not based in Mogadishu; that like the claimant in FY he had been out of Somalia for over twenty years; the Court in FY was of the view that the expert's evidence in MOJ that no clan help could be expected, was accepted by the Upper Tribunal and that like FY, the respondent was a minor when he left Somalia. He further argued that the Secretary of State's contention as to remittances were misconceived because the respondent was unlikely to receive any, unlike the 20-30 per cent of other Somalis.
16. Mr Gaisford submitted that it was not enough for the Secretary of State to say that the respondent's case was undistinguishable from the claimant in Said because both have mental health issues. The nature of the respondent's illness had been overlooked as well as the unchallenged expert medical evidence. It had never been the respondent's case that destitution alone would get him over the Article 3 threshold. At [22], the judge gave cogent findings as to why the respondent would not access

medical treatment which were unchallenged. Said indicated that individuals could succeed under Article 3 with reference to the considerations at [407] of MOJ. Mr Gainsford argued that all these matters were considered by the judge as well as other relevant matters. Distinguishing Said, Mr Gainsford pointed to the different diagnoses, that at most, the claimant in Said was found to be at risk of integration difficulties but that he had financial support, family support, clan protection and available medical treatment. In the respondent's case, the medical treatment would be inadequate to stop his decline and the Tribunal considering his first appeal made a finding that he would have no support in Mogadishu. The findings of serious harm were open to the judge on the unchallenged evidence that he would enter a circle of mental deterioration and owing to his presentation, the respondent was likely to stand out anywhere.

17. Ms Pal did not wish to respond to these submissions.

Decision on error of law

18. The grounds contended that the judge failed to give reasons why the respondent could not expect to benefit, at least initially, from remittances from family and friends in the United Kingdom. The judge made no error in this regard given the evidence before her that the only assistance the respondent received in the United Kingdom was practical support from his sister and his mental health team. Furthermore, at [24], in the context of discussing the issue of support, the judge found that there was "*no evidence*" of any family members in the United Kingdom able to remit money and that his sister was on benefits and had three children to support. The fact that up to 30 per cent of Somalis receive remittances does not amount to evidence that this would be the case for the respondent.
19. The Secretary of State further argued that the judge failed to give clear reasons why the respondent would not be able to access relevant medical treatment, relying on the reasoning in Said. The severity of the respondent's condition easily distinguishes his case from that of the claimant in Said. The judge had no hesitation in accepting the unchallenged conclusions of Professor Katona who provided a psychiatric report on the respondent as well as an earlier report by Dr Hopkins that the respondent would find it very difficult to look after himself and not draw attention to himself. That expert evidence, summarised by the judge at [22], was that the stress caused by the removal of the respondent to Somalia with the concomitant loss of the support of the mental health team and his sisters would be likely to aggravate his paranoid schizophrenia and result in the worsening of his hallucinations. That in turn would risk the respondent becoming more severely ill, disturbed and less likely to accept assistance including medical assistance, in particular. Following on from this deterioration in his mental state, the respondent

was likely to self-neglect and, furthermore, he would be unable to work to support himself. At [21], the judge records Professor Katona's description of the respondent as "*unkempt, malodorous and restless*" and suffering from auditory hallucinations despite the respondent benefitting from being medically treated, abstinent of illicit drugs and under the close monitoring of a mental health team.

20. The judge's decision clearly expressed that the finding of serious harm was reached on the basis of the respondent's mental health and not merely that he could not support himself. Nonetheless, it is the case that the evidence before the judge was that the respondent could not support himself in the United Kingdom where he had not worked for years, had poor interpersonal skills and his physical appearance caused him to stand out. There was no evidence before the judge to suggest that the respondent would be one of those returnees at an advantage in seeking employment in Mogadishu.
21. The Secretary of State's grounds and submissions regarding the judge's application of MOJ were poorly expressed and inaccurate. The judge considered the availability of clan support, correctly noting at [24], that his clan was not one which was based in Mogadishu. Furthermore, it was not in dispute that the respondent had no relatives in Somalia.
22. Given the foregoing as well as what was said in FY about the accepted of the expert evidence in MOJ regarding the absence of any expectation of support from one's clan, there is simply no merit in the Secretary of State's position.
23. In Said, at [21], the Court confirmed that claimants could succeed on Article 3 grounds, "*by showing they face particular (serious) harm to them or a combination of general and personal dangers.*" FY was an example of such a case and for very similar reasons, the judge was right to reach the conclusions she did regarding the respondent's likely circumstances if removed to Somalia.
24. The Secretary of State's arguments amount to no more than a disagreement with the judge's findings.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 13 December 2017

Upper Tribunal Judge Kamara