



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

Appeal Number: PA/06898/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 24th April 2017**

**Decision & Reasons Promulgated
On 4th May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[W F]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

Representation:

For the Appellant: Mr Bates, HOPO

For the Respondent: Mr Schwenk of Counsel instructed by Broudie Jackson & Canter

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Lloyd-Smith made following a hearing at Manchester on 30th November 2016.

Background

2. The claimant is a citizen of Somalia born on [] 1992. He arrived in the UK by air on 12th January 2016 and applied for asylum on the same day.
3. The appellant said that he was of Bravanese origin from the Brava Bida minority clan and was born and grew up in Somalia. He claimed that he worked in a grocery store and as a fisherman but had to leave his home area because he was being pressured to start working for Al Shabaab. The family moved to Mogadishu for six weeks and he was threatened by members of the Al Shabaab there. The family returned to Brava and arrangements were made for the appellant to leave the country and travel to the UK.
4. The judge did not believe the appellant's story in relation to Al Shabaab and did not accept that he had been targeted by them as claimed. She dismissed the asylum appeal.
5. The judge did however allow the appeal on humanitarian protection grounds, applying the country guidance case of MOJ and Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442.
6. She wrote as follows:

“Headnote (xii) of MOJ sets out the relevant considerations in making an assessment on risk. From the evidence before me I accept that the appellant is an orphan, his mother having died whilst fleeing with her children in July 2016. Having rejected his claim in relation to previously having fled to Mogadishu it must follow that I cannot be satisfied that he has any links there. He would have no access to funds from any source. His two uncles, both of whom have status in the UK failed to attend in support of his appeal. It seems apparent therefore given their lack of interest in even moral support for the appellant that they are highly unlikely to provide him with any financial support if forced to return. His younger siblings are in a Kenyan refugee camp so unable to offer any assistance. In the circumstances therefore I find that there is a ‘real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards’ (A pg 412 paragraph (xii)).”

The Grounds of Application

7. The Secretary of State sought permission to appeal on the grounds that the judge had failed to resolve conflicts of fact on material matters. The judge had accepted, on the claimant's oral account alone, that his mother had died in July 2016 and his siblings were in a refugee camp in Kenya. Having found his account of what had happened to him whilst living in Somalia to lack credibility, there was no reason why the judge believed

that the claimant's mother had died and his siblings were in Kenya and that he had no links to Somalia. It was not evident how the claimant became aware of his mother's death and his siblings' whereabouts; it demonstrated that the claimant continued to have contact and links with family members since he arrived in the UK.

8. The judge accepted on the claimant's oral evidence alone that he had no access to funds from any source. Having found the claimant's account to lack credibility there was no reason to believe that he no longer had access to funds and his own evidence was that he had entered the UK by flight in January 2016. The judge noted that the claimant's two uncles had failed to attend in support of the claimant's appeal and had concluded that they had no interest in supporting him which was an assumption. She had failed to consider the fact that they may have had work commitments that day.
9. Finally the judge had failed to take into account that the claimant had worked as a shopkeeper and a fisherman which demonstrated his resourcefulness and his ability to support himself.
10. Permission to appeal was granted by Judge Gillespie for the reasons stated in the grounds on 12th January 2017.

Submissions

11. Mr Bates relied on his grounds and submitted that the judge appeared to have accepted evidence at face value in relation to the claimant's family whilst rejecting the core of his account. He accepted that if the judge's conclusions were correct, and the claimant did not have family support in Mogadishu, then he would be entitled to succeed on humanitarian grounds. However the judge had found the claimant not to be a witness of truth and he could have actually spent far longer in Mogadishu than he had admitted to. He asked that the adverse findings in relation to the core of the claim be preserved and that further evidence be taken, either in the Upper Tribunal or in the First-tier Tribunal, in relation to the conditions which the claimant would face on return to Mogadishu.
12. Mr Schwenk submitted that the grounds amounted to a mere disagreement with the decision. The judge was entitled to accept the claimant's oral evidence. He doubted whether there was in fact a conflict over material issues since it did not appear that there was a challenge to the evidence that the claimant's siblings were in Kenya and that his mother had died. He asked that the decision be preserved.

Findings and Conclusions

13. This determination is a little thin and it would have been less vulnerable to appeal if the Immigration Judge had given more detailed reasons for her decision. However I am satisfied that it is sustainable.

14. First, it is not right to categorise the claimant, as the grounds seek to do, as someone whose credibility has not been accepted in any respect. Although his story of having been sought by Al Shabaab was rejected both by the Secretary of State and by the Immigration Judge, it was accepted that he was of the ethnicity which he claimed. Moreover it does not seem to be disputed that the family lived in Brava.
15. Neither is it clear that the Secretary of State's representative sought to challenge the evidence at the hearing that the claimant's siblings were in Kenya and that his mother had died. He gave evidence that she had died in July 2016. The claimant was asked how he had found out about her death and he explained that he had been given the news by his brothers. His mother had had high blood pressure and was without medication. It appears that the Presenting Officer asked whether he had any documentary proof of her death, but so far as I can tell from the record of proceedings, no submissions were made in relation to that evidence.
16. Neither is there a reference in the determination to a challenge being made to the evidence that the claimant's siblings are in a refugee camp in Kenya. Given that they are also from a minority clan it is not inherently unlikely that they should have also left Somalia.
17. It was open to the judge to conclude that the claimant's family situation was as he claimed on the basis of the oral evidence, particularly when it would not appear that that evidence was challenged at the hearing.
18. So far as the funding of his trip is concerned, the claimant explained that his mother had sold the family home. Again, so far as I can see, that was not challenged.
19. The judge explained why she had concluded that the appellant's uncles were unlikely to provide him with any financial support if forced to return given their lack of involvement with him in the UK.
20. The final ground is irrelevant. Mr Bates accepted that if the claimant's family circumstances were as he said they were, he was entitled to a grant of humanitarian protection.
21. The grounds amount to a disagreement with the decision.

Notice of Decision

The original judge did not err in law. Her decision stands. The challenge by the Secretary of State is dismissed.

No anonymity direction is made.

Deborah Taylor

Signed
Deputy Upper Tribunal Judge Taylor

Date 1 May 2017