



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

Appeal Number: RP/00069/2016

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons Promulgated
Birmingham
On 8th May 2017**

On 14 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford, Counsel instructed by Sultan Lloyd Solicitors
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Somalia born on [] 1993. He entered the UK illegally on 10th June 2007 and applied for asylum. He was granted refugee status on 5th October 2007 with leave to remain until 5th October

2012. However, the Appellant was convicted of a string of offences including robbery, handling stolen goods, breach of a suspended sentence, and causing death by careless driving. As a consequence, it was decided to revoke the Appellant's refugee status under the provisions of Article 1C(5) of the 1951 Convention and to deport him. The Appellant appealed on human rights grounds, and that appeal was heard by Judge of the First-tier Tribunal Gribble (the Judge) sitting at Birmingham on 26th December 2016. She decided to dismiss the appeal under the Immigration Rules and under Article 8 ECHR for the reasons given in her Decision dated 16th October 2016. The Appellant sought leave to appeal that decision and such permission was granted on 10th January 2017.

Error of Law

2. I must first decide if the decision of the Judge contained a material error of law so that it should be set aside.
3. The Judge dismissed the appeal because, as she wrote at paragraph 42 of her Decision, she found that the Appellant did not qualify for asylum. At the hearing before me, Mr Bedford argued that the Judge erred in law because she had placed the burden of proof upon the Appellant whereas in cessation cases the burden of proof was reversed and fell upon the Respondent to show that the Appellant's existing refugee status should be revoked.
4. In response Mrs Aboni argued that there was no such error of law as the Judge had considered the cessation provisions and dealt with all the issues in the appeal.
5. I find that the decision of the Judge contained a material error of law and therefore I set it aside. The Judge dealt with the appeal on the basis of whether it was safe for the Appellant to return to Somalia. Therefore, she placed the burden of proof upon the Appellant as she stated at paragraph 15 of the Decision. However, the issue in the appeal was whether there were any new circumstances so that the Appellant no longer qualified for asylum protection. It is trite law that by virtue of Article 14.2 of the Qualification Directive as interpreted in **Abdulla v Germany [2010] ECR 1-01493** that the burden is reversed and falls upon the Respondent to show that this is the case. The decision of the Judge is therefore fundamentally flawed and the decision in the appeal needs to be re-made in the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be re-made in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements.

Anonymity

The First-tier Tribunal made an order for anonymity which I continue for the same reasons as those given by the First-tier Tribunal.

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 his 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 13th June 2017

Deputy Upper Tribunal Judge Renton